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THE CORPORATION OF THE CITY OF HAMILTON

AND

GREATER HAMILTON DEVELOPERS LIMITED

AND

YALE PROPERTIES LIMITED

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GOVERNMENT DOCUMENTS

DEVELOPMENT AGREEMENT AND
SCHEDULES

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DEVELOPMENT AGREEMENT

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SCHEDULES

Schedule A:	Plan marked to designate the Parts
Schedule B:	Schematic Design including site plans, building plans, elevations, sections, descriptions of nature of user, location, areas and heights of Improvements, minimum number of underground parking spaces for each Phase and such other detail of Commercial Sites development as is presently available.
Schedule C:	Form of Lease for Phase One
Schedule D:	General Adaptations to Schedule C Form of Lease for Phase Two
Schedule E:	General Adaptations to Schedule C Form of Lease for Phase Three
Schedule F:	General Adaptations to Schedule C Form of Lease for Phase Four
Schedule G:	General Adaptations to Schedule C Form of Lease for Phase Five
Schedule H:	General Adaptations to Schedule C Form of Lease for Phase Six

AGREEMENT made as of the

day of

, 1970.

B E T W E E N:

THE CORPORATION OF THE CITY OF HAMILTON

OF THE FIRST PART

- and -

GREATER HAMILTON DEVELOPERS LIMITED

OF THE SECOND PART

- and -

YALE PROPERTIES LIMITED

OF THE THIRD PART

WITNESSETH that for valuable consideration the parties
hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01: Defined Terms

For the purpose of this agreement and the schedules
hereto, the following expressions shall have the meanings respectively
hereinafter ascribed to them in this Section 1.01:

- (a) "Amended Renewal Scheme" shall mean the Redevelopment
Plan for the Urban Renewal Area adopted pursuant to
Section 20 of The Planning Act entitled "Civic Square
Urban Renewal Scheme, City of Hamilton, October, 1965"
as amended by Addendum No. 1 dated March 25th, 1966,
by Addendum No. 2 dated November, 1966 and by Addendum
No. 3 dated April, 1969 together with such further
amendments as are lawfully made thereto from time to
time;
- (b) "Architect" shall mean Arthur C. Lau acting for the
Developer pursuant to a contract for architectural
services or such other architect or architects as may
be employed by the Developer in substitution for or
in addition to Arthur C. Lau with the consent of

the Review Authority which consent shall not be unreasonably withheld;

- (c) "Business day" or "day" shall mean any day of the week except Saturdays, Sundays and statutory holidays;
- (d) "City" shall mean the Corporation of the City of Hamilton;
- (e) "City Engineer" shall mean the City Engineer of the City or such person or persons as may be designated from time to time by the City to represent him;
- (f) "CMHC" shall mean Central Mortgage and Housing Corporation or any successor or assign representing Her Majesty the Queen in the right of Canada;
- (g) "Commercial Sites" shall collectively mean Parts One, Two, Three, Four, Five and Six of the Urban Renewal Area as shown on the Plan annexed hereto as Schedule A or as they may be altered by agreement from time to time;
- (h) "Coordinator" shall mean the person acting as Coordinator, Civic Square Development appointed from time to time by the City acting under the direction of the City;
- (i) "Developer" shall mean Greater Hamilton Developers Limited, a company incorporated under the laws of Ontario having its head office in the City of Hamilton in the County of Wentworth in the Province of Ontario;
- (j) "Expropriations Act" shall mean The Expropriations Act, Chapter 36, Statutes of Ontario, 1968-69, and as it may be amended;
- (k) "Expropriations Procedures Act" shall mean The Expropriations Procedures Act 1962-63, Chapter 43, Statutes of Ontario, 1962-63 as amended;
- (l) "Final Working Drawings and Specifications" shall comprise the following documents:
 - (1) Completed site plans for the final development of a Phase or a part of a Phase to working drawing level of detail. These completed site plan drawings upon approval by the Review Authority will also serve as basic coordination drawings indicating

- the scope of work and responsibilities to be performed by or on behalf of the City and the Developer;
- (2) Complete working drawings and specifications necessary for constructing the appropriate Improvement or Improvements;
- (3) Statement of development proposal indicating differences if any, from 1.01 (w) below;
- (m) "Governments" shall mean collectively the City, CHMC and Ontario;
- (n) "Guarantor" shall mean Yale Properties Limited a company incorporated under the laws of Canada with its head office in the City of Montreal in the Province of Quebec;
- (o) "Improvements" shall mean the buildings, fixtures and other works to be constructed or constructed by the Developer pursuant to the approved Final Working Drawings and Specifications or such plans as may have been approved by the Review Authority prior to the granting of a lease of a Part or any portion thereof;
- (p) "Municipal Board Act" shall mean The Ontario Municipal Board Act, Chapter 274, Revised Statutes of Ontario, 1960 as amended and as it may be further amended;
- (q) "Net rentable area" shall be as defined in Schedule C hereto or such schedule as is appropriate to the Phase in question;
- (r) "OMB" shall mean the Ontario Municipal Board or any successor thereto;
- (s) "Ontario" shall mean Her Majesty the Queen in the right of Ontario;
- (t) "Part" or "Parts" shall include the following:
- (1) "Part One" shall mean that area so designated on Schedule A hereto on which the Improvements comprised in Phase One are to be constructed.
- (2) "Part Two" shall mean that area so designated on Schedule A hereto on which the Improvements comprised in Phase Two are to be constructed.

- (3) "Part Three" shall mean that area so designated on Schedule A hereto on which the Improvements comprised in Phase Three are to be constructed.
- (4) "Part Four" shall mean that area so designated on Schedule A hereto on which the Improvements comprised in Phase Four are to be constructed.
- (5) "Part Five" shall mean that area so designated on Schedule A hereto on which the Improvements comprised in Phase Five are to be constructed.
- (6) "Part Six" shall mean that area so designated on Schedule A hereto on which the Improvements comprised in Phase Six are to be constructed.
- (7) "Part Seven" shall mean that area so designated on Schedule A hereto on which the Improvements comprised in Phase Seven are to be constructed.
- (u) "Phase" or "Phases" shall include the following:
 - (1) "Phase One" shall mean the construction of the Phase One Improvements outlined in Section 3.04 hereof and in Schedule B hereto.
 - (2) "Phase Two" shall mean the construction of the Phase Two Improvements outlined in Section 3.04 hereof and in Schedule B hereto.
 - (3) "Phase Three" shall mean the construction of the Phase Three Improvements outlined in Section 3.04 hereof and in Schedule B hereto.
 - (4) "Phase Four" shall mean the construction of the Phase Four Improvements outlined in Section 3.04 hereof and in Schedule B hereto.
 - (5) "Phase Five" shall mean the construction of the Phase Five Improvements outlined in Section 3.04 hereof and in Schedule B hereto.
 - (6) "Phase Six" shall mean the construction of the Phase Six Improvements outlined in Section 3.04 hereof and in Schedule B hereto.
 - (7) "Phase Seven" shall mean the construction of the Phase Seven Improvements outlined in Section 3.04 hereof and in Schedule B hereto.
- (v) "Planning Act" shall mean The Planning Act, Chapter 296, Revised Statutes of Ontario, 1960, as amended and as it may be further amended;
- (w) "Plans" shall comprise the following documents:

- (1) A site plan and further plans at a scale of 1" = 50' or 1" = 40' developed in such detail as may be reasonably required by the Review Authority to illustrate the development of a Phase or Phases completely. Without limiting the generality of the foregoing, the site plan or plans shall include at roof, plaza, concourse and service levels, the location and general character of the details of development of the Phase or Phases including pedestrian and vehicular circulation, landscaping, railings, fountains, sculpture, lighting, pools, street furniture, external materials for Improvements, number and type of parking facilities, utility lines and connections, existing and proposed grading, location and elevation of easements to be reserved to the City for services and utilities and proposed location and elevation of easements for services and utilities required by the development; location of delivery areas, service lanes, escalators, staircases, elevators, and proposed connections with facilities, tunnels and/or over-passes and services outside the Commercial Sites; the general relationship of the proposed Improvements and their integration with streets, buildings and improvements proposed or existing in that part of the Urban Renewal Area not included in the Commercial Sites;
- (2) Building drawings showing floor plans, elevations and sections drawn to a scale of one-sixteenth of an inch equals one foot (1/16" = 1') sufficient to illustrate fully the applicable part of the aforesaid plans and showing full detail of all gradings, signs, canopies, street levels, structures below grade, materials and assemblies and other detail including any exposed mechanical equipment, intakes and vents;

- (3) Outline specifications for materials and method of construction;
- (4) Eye-level perspective sketches and/or models showing architectural and urban design characteristics of the development proposed, together with a rendered site plan showing the development of the Phase or Phases and a schematic rendering of its relationship to all adjacent proposed and existing structures and streets in accordance with the detail then available to the Developer from the City;
- (5) Details of development including dimensions and gross area of the appropriate Improvements and information respecting integration of work between Developer and the City;
- (6) Schedule for design review and completion of Final Working Drawings and Specifications;
- (x) "Publicly Usable Open Space" shall mean those areas of the Commercial Sites so designated on Schedule B hereto;
- (y) "Review Authority" shall mean the authority referred to in Section 2.05 hereof;
- (z) "Urban Renewal Area" shall mean the redevelopment area designated by By-law No. 10781 as amended by By-law No. 66-76 enacted by the Council of the City on the 29th day of June, 1965 and the 22nd day of February, 1966, respectively and such changes in such area as may be lawfully made from time to time.

Section 1.02: Interpretation

The captions and headings in this agreement are inserted only for convenience of reference and do not define, limit or enlarge the scope, meaning or intent of any provision. This agreement shall be interpreted and governed by the laws of the Province of Ontario.

ARTICLE II

GENERAL

Section 2.01: Intent

The parties understand and agree that the purpose of this agreement, pursuant, inter alia, to The National Housing Act, 1954, Chapter 23, Statutes of Canada, 2-3 Elizabeth II, 1953-54, as amended and The Planning Act, is to implement a portion of the Amended Renewal Scheme for the Urban Renewal Area, the object of which scheme is to achieve the best possible combination of public and private uses of a high standard of urban design and function. In order to induce such redevelopment the Governments are bearing the cost of the acquisition and clearing of lands and buildings in the Urban Renewal Area and certain other costs in connection therewith. In addition, parts of the Urban Renewal Area have and will be developed by the City and others for public purposes.

Section 2.02: Approvals

It is a condition of this agreement that the City shall obtain all requisite consents, orders or other approvals from the appropriate municipal, provincial and federal authorities with respect to this agreement, to the form of ground lease hereto annexed as Schedule C, to the amendment of the Amended Renewal Scheme, if required, to the acquisition of the Parts by the City and to the leasing of the Parts to the Developer, and to other matters relating to the carrying out of this agreement and the Developer agrees to cooperate in the obtaining of such consents, orders or other approvals. If such consents, orders or approvals have not been obtained so as to enable the City to grant a lease of Part One to the Developer (provided the Developer has met the conditions set out in Section 3.06 hereof which are to be fulfilled by it) so as to permit the Developer to commence the construction of Phase One on October 19th 1970, the Developer may at its option, by notice in writing to the City terminate this agreement and in such event the Developer and the City shall be released from all obligations hereunder.

Section 2.03: Public Uses

The Developer agrees to design, construct and maintain the Improvements for the Phases and such pedestrian and vehicular access thereto which by the terms hereof the Developer has agreed to construct so as to complement and achieve the best possible integration of their use, access and function with the public uses (including without limitation the Hamilton Central Stall Holders Farmers' Market, the Art Gallery, the Public Library, the Education Centre and the Theatre Auditorium and Convention Centre as described in the Amended Renewal Scheme).

Section 2.04: Registration and Title

The parties agree that this agreement or a duplicate thereof shall be registered forthwith upon the vesting in the City from time to time of title to the Parts. The City agrees to cause the necessary steps to be taken to acquire the properties and to close the highways comprised in the Parts but makes no representations or warranties as to the title thereof. The Developer, at its expense, may proceed to place the Parts under The Certification of Titles Act, Revised Statutes of Ontario 1960, Chapter 48, as amended, as such Parts are acquired by the City and the City agrees to cooperate with the Developer in this respect and without limiting the generality of the foregoing to make available to the Developer all relevant surveys, documents and records in its possession or under its control. Save as aforesaid the preparation of all necessary plans and materials shall be the responsibility of the Developer and it shall bear all costs in relation thereto.

Section 2.05: Review Authority

The Review Authority shall be the Coordinator until such time as the Coordinator holding office at the time of the execution of this agreement ceases to hold such office. His successor shall continue to act as the Review Authority until such time as either the Developer or the City upon notice in

writing to the other, appoints a second member to the Review Authority in which event the other party shall forthwith appoint a third member, thus increasing the Review Authority to three members. If and when the Review Authority comprises three persons, two persons shall constitute a quorum and decisions shall be by majority vote; the Coordinator shall act as Chairman of the Review Authority. The City may appoint such advisers to the Review Authority as it deems necessary from time to time. The Review Authority shall promptly review any matters referred to it pursuant to the provisions of this agreement and the Chairman shall convey in writing any required decision and/or approval within twenty days after any matter has been referred to it unless the said period of twenty days is altered by agreement in writing by the City and the Developer. In the event that the Review Authority fails to render a decision on any matter within the prescribed period such matter shall be deemed to have been approved. The City members of the Review Authority shall act on the direction of the City through a committee of the Council of the City reporting to the Council of the City.

ARTICLE III

LEASING OF COMMERCIAL SITES TO DEVELOPER

Section 3.01: Agreement to Lease

(a) Subject to all the terms, covenants and conditions of this agreement, the City agrees to lease the Parts to the Developer and the Developer agrees to lease the Parts from the City, such leases to be in the form appropriate to the Phase as hereto annexed.

(b) The Developer may designate that any lease referred to in Section 3.01 (a) and its rights and obligations hereunder with respect to the Phase covered by such lease be granted to a corporation (other than the Developer) in which, unless otherwise agreed to by the City, any one or more of the Developer,

the Guarantor and The Standard Life Assurance Company have a significant equity interest or to a partnership or consortium of persons and/or corporations a significant partner or member of which shall, unless otherwise agreed to by the City, be the Developer, the Guarantor or The Standard Life Assurance Company.

(c) Any reference in this agreement to a lease or leases to the Developer or words to the like effect shall include a lease or leases described in paragraph (b) above.

Section 3.02: Conditions of Parts
at Times of Delivery of Possession

The City agrees that at the respective times of delivery of possession of the Parts as hereinafter provided, the Part or Parts shall be free and clear of all buildings, structures and improvements, except streets, lanes and sidewalks and except walls, services, rubble and foundations below the surface (surface to be as defined by the immediately adjoining sidewalk levels as they presently exist). Prior to the execution of this agreement the City shall advise the Developer of any services which are to remain and the location thereof and shall exercise its best efforts to ensure that at the time of delivery of possession as aforesaid all water and gas mains of which it has knowledge which are not to remain have been abandoned. Except for the aforesaid obligations, the City makes no representations or warranties, either express or implied, as to the condition of the Parts at the time of their delivery.

Section 3.03: Possession Schedule

Subject to the provisions of this agreement, and if required, to OMB approval under The Municipal Board Act, and to approval under The Planning Act, the City agrees to lease the Parts to the Developer (as provided in Section 3.06 hereof) with possession being granted on the dates shown on Schedule A hereto.

If the City shall be delayed in the delivery of possession of any of the Parts by the dates set out in Schedule A by any cause beyond the reasonable control of the City including any delays occasioned by any proceedings or acts of any persons occupying or having any interest in the Parts or immediately abutting lands either under The Expropriations Act (including such delays as may be occasioned by an inquiry under the Expropriations Act if such inquiry is not dispensed with under Section 6 (3) thereof), under The Expropriations Procedures Act or by any order or proceedings in any court of competent jurisdiction or by any other authority (including the OMB) or by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other similar casualty or by any other matter not within its control and not caused by its fault or act of commission or omission and not avoidable by reasonable effort or foresight, then the respective times referred to above shall be extended for a period of time equal to the loss of time due to such delays.

Section 3.04: Development Schedule

1. The Developer agrees that the Improvements to be constructed will be in conformance with the provisions of this agreement and with the requirements as to number of square feet, location, maximum coverage at plaza level and maximum and minimum heights shown on Schedule B hereto (subject to reasonable modification on the approval by the Review Authority). Subject to the provisions of this agreement the Developer further agrees to complete the construction of the Improvements for a Phase within the time limits set out in this Section 3.04.

<u>Nature of Improvements</u>	<u>Commencement Date</u>	<u>Construction Period</u>	<u>Completion Date</u>
<u>PHASE ONE</u>			
First Office Tower	October 19th, 1970	Twenty-four months	
Banking Chamber			
Service Area			
Malls			
Cinemas			
			October 18th 1972

Retail Commercial Space)
Parking)

PHASE TWO

Department Store other) October 19th, 1972 Eighteen
than The T. Eaton) months
Company Limited)

Retail Commercial Space) April 18th,
Parking) 1974

PHASE THREE

Second Office Tower,) April 19th, 1974 Twenty-four
Associated Retail Commercial) months
Space)

Parking) April 18th,
1976

PHASE FOUR

Hotel,) April 20th, 1974 Twenty-four
Associated Retail Commercial) months
Space)

Parking) April 19th,
1976

PHASE FIVE

The T. Eaton)
Company Limited)
Expansion - (First Stage)) October 19th, 1970 Twenty-four October 18th,
months 1972

PHASE SIX

Residential development)
Parking) as set out below

PHASE SEVEN

[Farmers Market])
Public Library) To be decided by City

The Publicly Usable Open Space contemplated by the Plans with respect to each Phase will be completed in conjunction with the completion of each Phase. At time of completion of such

Publicly Usable Open Space, the City agrees to provide police protection for such Publicly Usable Open Space as may be required in the judgment of the City and at least to the same extent as provided to public parks in the City of Hamilton.

Subject to the provisions of this agreement, the Developer, unless otherwise agreed to in writing by the City, shall commence and complete Phases One to Four inclusive in that order, maintaining the commencement and completion dates set out in this Section 3.04(1). If requested by the Developer in writing the commencement and completion dates for any Phase may be accelerated with the consent in writing of the City. If some one other than the Developer pursuant to the provisions of Section 3.04(2) or (3) hereof, develops Phases Two or Three, then the periods of first refusal set out in Sections 3.04 (3) and/or (4) shall be shortened by deducting therefrom that length of time calculated by subtracting the date of commencement of the relevant lease to some one other than the Developer from April 18th 1976 and/or April 19th, 1976 respectively.

2. If the lease to Part Two upon which Phase Two is to be constructed is not entered into and possession of the Part Two lands is not taken by the Developer on or before October 19th, 1972 the City shall be free to offer the lands comprised in Part Two for lease and development as a site for a department store, other than The T. Eaton Company Limited retail commercial space and parking. If the City at any time between October 19th, 1972 and April 18th, 1974 receives a bona fide offer acceptable to it from some one other than the Developer for the construction of Phase Two and the leasing therefor of Part Two, the City shall present such offer to the Developer, who, within ninety days, may by notice in writing elect to develop Phase Two on the same terms and conditions as are contained in such offer. If the Developer does not so elect to develop Phase Two on such terms and conditions, the City shall be free to accept such offer on the same terms and conditions as contained in the original offer

and if the City does so accept such offer within a reasonable time all the Developer's rights and obligations with respect to Phase Two shall terminate. Provided that if the City does not so accept such offer, the Developer's rights to enter into a lease and take possession of the Part Two lands and construct Phase Two thereon, within the construction period set out above, shall continue unimpaired and so on from time to time until April 18th, 1974. On and after April 19th, 1974, the Developer shall have no further rights or obligations whatsoever with respect to Phase Two if it has not then entered into a lease with respect thereto.

3. If the lease to Part Three upon which Phase Three is to be constructed is not entered into and possession of the Part Three lands is not taken by the Developer on or before April 19th, 1974 the City shall be free to offer the lands comprised in Part Three for lease and development as a site for a second office tower, associated retail commercial space and parking. If the City at any time between April 19th, 1974 and April 18th, 1976 receives a bona fide offer acceptable to it from some one other than the Developer for the construction of Phase Three and the leasing therefor of Part Three, the City shall present such offer to the Developer, who, within ninety days, may by notice in writing elect to develop Phase Three on the same terms and conditions as are contained in such offer. If the Developer does not so elect to develop Phase Three on such terms and conditions, the City shall be free to accept such offer on the same terms and conditions as contained in the original offer and if the City does so accept such offer within a reasonable time all the Developer's rights and obligations with respect to Phase Three shall terminate. Provided that if the City does not so accept such offer, the Developer's rights to enter into a lease and take possession of the Part Three lands and construct Phase Three thereon within the construction period set out above, shall continue unimpaired and so on from time to time until April 18th, 1976. On and after April 19th, 1976, the Developer shall have no further rights or obligations whatsoever with respect to Phase Three if it has not then entered into a lease

with respect thereto.

4. If the lease to Part Four upon which Phase Four is to be constructed is not entered into and possession of the Part Four lands is not taken by the Developer on or before April 20th, 1974 the City shall be free to offer the lands comprised in Part Four for lease and development as a site for a hotel, associated retail commercial space and parking. If the City at any time between April 20th, 1974 and April 19th, 1976 receives a bona fide offer acceptable to it from some one other than the Developer for the construction of Phase Four and the leasing therefor of Part Four, the City shall present such offer to the Developer, who, within ninety days, may by notice in writing elect to develop Phase Four on the same terms and conditions as are contained in such offer. If the Developer does not so elect to develop Phase Four on such terms and conditions, the City shall be free to accept such offer on the same terms and conditions as contained in the original offer and if the City does so accept such offer within a reasonable time all the Developer's rights and obligations with respect to Phase Four shall terminate. Provided that if the City does not so accept such offer, the Developer's rights to enter into a lease and take possession of the Part Four lands and construct Phase Four thereon within the construction period set out above, shall continue unimpaired and so on from time to time until April 19th, 1976. On and after April 20th, 1976, the Developer shall have no further rights or obligations whatsoever with respect to Phase Four if it has not then entered into a lease with respect thereto.

5. The Developer and the City shall enter into an agreement on or before April 18th, 1974 scheduling the development, leasing, construction period, staging and completion of Phase Six. If such an agreement has not been entered into on or before April 18th, 1974, the Developer shall have no further rights or obligations with respect to Phase Six. The reasonableness of the number of units to be completed during each stage of the development of Phase Six shall be subject to arbitration pursuant to the provisions of Section 5.08 hereof.

6. If the Developer is delayed in the completion of the Improvements above referred to by the inability of the City to

deliver possession of a Part when the Developer is otherwise entitled thereto, or by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other similar casualty, or by any other matter not within its reasonable control and not caused by its default or act of commission or omission and not avoidable by reasonable effort or foresight, then the respective times for commencement and completion shall be extended by a period or periods equal to the time lost due to such delays.

Section 3.05: Review Process

(a) The Developer agrees to maintain a site office, proximate to the Commercial Sites at which office there shall be present on a regular basis a representative of the Architect and such other personnel as may be required in order to ensure a satisfactory liaison between the Developer and the City on the planning and development of the Commercial Sites. The Developer shall employ such architects, engineers, solicitors, consultants and others so as to provide City with the information required to ensure the expeditious completion of the review of the Developer's plans, design and landscaping at all stages.

The architectural, landscape and other advisers to the Review Authority shall report directly to the Coordinator and shall work with the Architect and the Developer so as to ensure that there is a continuous and effective process of design and landscaping review. The said review process shall include such matters as landscaping, entrances, pedestrian movement and amenities, visual integration and physical interconnections with other elements of the Amended Renewal Scheme and the surrounding area including truck access, public transportation and parking, the selection and use of materials for the exterior of all Improvements, public areas and interior streets of shopping malls. Four copies of the Plans, Final Working Drawings and Specifications and such reports, economic studies and other data and information as may be requisite for the implementation of a Phase shall be

delivered to the Review Authority at least seven days or such greater or lesser time as may be agreed upon before any such material is to be discussed. In the event of default by the Developer under this agreement all plans, studies, models, Plans, Final Working Drawings and Specifications, reports, submissions and documents prepared by or for the Developer in connection with the Phases and/or Amended Renewal Scheme shall become the property of the City free from any claim of copyright by anyone whomsoever.

All signs, lighting, receptacles, benches, landscaping, planters, poles, standards, sculpture, fountains, pools, grassed areas, plantings, street furniture and other aesthetic detail particularly as it relates to the Publicly Usable Open Space proposed by the Developer for a Part or Parts shall be subject to the approval of the Review Authority in order to assure that they are integrated with the character of the Improvements and with the remainder of the Amended Renewal Scheme so as to achieve a high standard of urban and landscape design. The City shall cooperate with the Developer in the execution of the works to be performed by it pursuant to the Amended Renewal Scheme and the City and the Developer shall cooperate and agree as to the best methods of coordinating the construction of Improvements in areas where the Commercial Sites abut the remainder of the Urban Renewal Area including material to be used therefor and the design thereof. The Developer agrees that all signs proposed by it for the Improvements must be integrated with the overall design and shall not adversely affect its aesthetic qualities and that such signs shall be restricted to non-flashing signs identifying the establishment and the nature of its business; the design, placement and number of such signs to be subject to the approval of the Review Authority.

(b) During the course of construction of any Phase the City shall be entitled to examine such books, records and documents and may request such material and information as may be reasonably

required to satisfy it of the continuing financial stability of the Guarantor and of the Developer's continuing financial ability to complete the Improvements and as to its long term financing arrangements as related to the appropriate Phase. Without limiting the generality of the foregoing, the Developer shall forward to the City satisfactory evidence of the progress payments to its construction or building company together with the billings therefor and evidence of the payment of the final billing.

Both before and after the commencement of construction of a Phase, the City shall have the right to participate in the formulation of any financial plan whenever such plan requires alterations to be made to this agreement or the form of ground lease applicable to the Phase in question.

Section 3.06: Leasing of Parts

1. When the City has approved the Plans or the Final Working Drawings and Specifications for the Improvement or Improvements to be erected with respect to Phase One, Phase Two, Phase Three, Phase Four, Phase Five or Phase Six as the case may be, the City agrees to enter into leases from time to time with the Developer in the form appropriate to such Phase or Phases as annexed hereto of the relevant Part or Parts provided that the following conditions have been satisfied:

- (a) The required Part or Parts shall have been acquired by the City pursuant to the provisions of Section 3.03 hereof;
- (b) The approval by CMHC and Ontario to the leasing of the Part or Parts shall have been obtained;
- (c) An agreement pursuant to Section 20 (9) of The Planning Act shall have been executed or there shall have been other compliance with the said subsection and such other orders or approvals as may be required by The Planning Act or other legislation shall have been obtained;

- (d) The Developer shall have deposited with the City a copy of a contract, reasonably satisfactory in form and content to the Review Authority, with a construction or building company under which such construction or building company shall have full and continuing responsibility to the Developer for the construction and completion of the Improvements on such Part or Parts in accordance with the provisions of this agreement;
- (e) The Developer shall have provided the City with policies of insurance satisfactory to the Review Authority to be maintained in force at the sole cost and expense of the Developer until the completion of the construction of such Improvements:
 - (i) Protecting both the Developer and the City (without any rights of subrogation against the City) against claims for personal injury, death or property damage or third party or public liability claims arising from any accident or occurrence upon, in or about the Part or Parts and from any cause including the risks occasioned by the construction of the Improvements to an amount of not less than \$5,000,000 for any personal injury, death, property or other claims in respect of any one accident or occurrence; and
 - (ii) Protecting both the Developer and the City from loss or damage (without any rights of subrogation against the City) to the Improvements and all fixtures, equipment and building materials on the Part or Parts from time to time, both during and after construction (which may be by policies effected from time to time covering the risk of different phases of construction) against fire, all other perils from time to time customarily included in the usual extended coverage endorse-

ments on fire policies applicable to similar properties during construction and effected in Ontario by prudent owners and such other perils as the City may reasonably require to be insured against, to the full insurable value thereof at all times (to be computed upon a replacement cost basis with deduction only for the cost of excavation and foundations) and in any event there shall be no co-insurance provision;

- (f) The City shall have issued a building permit for such Improvements;
- (g) The Developer shall have complied with any other municipal or governmental laws, by-laws or regulations;
- (h) The Developer shall have furnished evidence satisfactory to the City that the Developer has sufficient mortgage and equity commitments to enable the City to satisfy itself that the Developer has the financial resources and/or financial commitments and general financial ability adequate for the construction and completion of all Improvements to be constructed for a Phase in accordance with the provisions of this agreement.
- (i) The Developer shall have caused its contractor to furnish at the sole cost and expense of the Developer or its contractor, a performance of contract bond with respect to the completion of such Improvements, which performance of contract bond shall make the Developer the sole obligee and insured, shall be in form satisfactory to the City and shall be with a surety company licensed to do business in the Province of Ontario, provided that if such a bond is not required by the Developer's mortgagee or financiers, there shall be no obligation to furnish such a bond. At the option of the City, upon notice in writing, the Developer shall assign its rights as obligee of such performance of contract bond to the City and the Developer shall upon request of the City assign its rights for the enforcement of the said contract to the City.

The foregoing conditions are inserted for the sole benefit of the City and the City may, by notice in writing, waive any of them in whole or in part without prejudice to the remedies of the City in the event of the non-fulfilment of any other condition or conditions.

2. (a) The annual basic rent to be paid for Phases One to Five inclusive shall be the greater of
 - (i) that amount calculated by multiplying the number of square feet of land leased in connection with any Phase by 48¢ or
 - (ii) the sum of that amount calculated by multiplying the number of square feet of land leased in connection with any Phase by 12¢ plus that amount calculated by multiplying the number of square feet of net rentable area of Improvements constructed when the same are deemed to be completed for assessment purposes by 10¢
- (b) The annual basic rent for Phase One calculated as aforesaid shall be increased by adding thereto that annual amount calculated by multiplying by 70¢ the number of square feet of net rentable area of Improvements in Phase One constructed and sub-leased and with respect to which the sub-Lessee has an immediate right of entry in excess of 90% of the total net rentable area of Phase One when 90% of such net rentable area of Phase One has been constructed and so sublet. The additional rent of 70¢ per square foot per annum, calculated as aforesaid, shall continue to be paid only until such time as the aggregate of the annual basic rents (by whomsoever paid) for Phases One to Five inclusive equals or exceeds \$180,000 or until ten years after the date of the commencement of payment of such additional rent, whichever occurs earlier. For the purpose of ascertaining the date of commencement of such additional rent the Developer shall make available for inspection by the City at all reasonable times such books, documents and records as may be required.

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- (c) The annual basic rent for Phase Six or any part or parts thereof shall be 8.5% of that amount calculated by compounding annually from October 19th, 1970 at the rate of 4% a 1970 land value of \$2,000 per self-contained unit of residential accomodation. The amount so calculated shall be a maximum rent and the actual fair market rent to be charged for Phase Six or any part or parts thereof shall be subject to negotiation at the time the Developer proposes to lease such Part or part or parts thereof. If the parties fail to agree as to the amount of the annual basic rent, the provisions of Section 5.08 shall apply but the arbitrator, in determining the fair market rent shall not increase such rent to an amount which would exceed the amount calculated by the application of the aforesaid formula.
- (d) The City agrees not to expropriate or otherwise acquire for the purpose of initiating the opportunity for commercial development any of the lands in the northerly 120 feet throughout from front to rear of the block bounded on the north by King Street West, on the east by James Street South, on the south by Main Street West and on the west by McNab Street South until April 18th, 1974 or until such time as 85% of the net rentable areas of Phases One to Four inclusive, devoted to any use which would be the same as that proposed for the aforesaid area, have actually been leased, whichever date or time shall first occur.

3. The lease for Phase Five may be assigned by the Developer to The T. Eaton Company Limited and in such event The T. Eaton Company Limited shall agree with the City to assume, mutatis mutandis, all obligations of the Developer hereunder relating to such Phase. Should any of the facilities presently provided

by the Market Ramp Garage, by agreement between the Developer and the City, be eliminated, the Developer, prior to such elimination, at its expense, shall provide or cause to be provided suitable, proximate and reasonably equivalent facilities and the land therefor. The Developer shall also compensate the City for any damage to or interference with the Market Ramp Garage or its operations occasioned by the construction of the Improvements and replace any facilities, such as ramps, elevators or staircases which such construction may necessitate.

Section 3.07: Copies of Insurance and
Payment of Premiums

The Developer shall pay all premiums and costs of all insurance and bonds required to be effected by the Developer under any provision of this agreement and shall from time to time file with the City certified copies of insurance policies and bonds, renewal contracts and other documents sufficient to show and establish accurately, at all times, the current status of policies and bonds in force and in particular shall submit to the City before the expiration of every current policy or bond, evidence of the renewal of such policy or bond or the issuance of a replacement policy or bond and of the payment of all premiums due for such renewal or replacement, and shall promptly notify the City of any cancellation or intended cancellation by any insurer of any policy or bond or any circumstances known to the Developer materially affecting its coverage. The Developer shall not cancel any policy of insurance or bond without the prior written consent of the City, which consent shall not be unreasonably withheld. Each policy or bond shall provide that no cancellation shall be effective without prior notice by the insurer to the City. If the Developer shall be in default with respect to any of its obligations under this agreement regarding insurance, or bonds including the obligation to submit proof of insurance or bonds to the City, the City may, but shall not be obliged

to, place any such insurance or obtain such a bond at the cost and expense of the Developer or pay any arrears of premium, and any expense incurred by the City shall be reimbursed to it by the Developer as a liquidated debt on demand.

ARTICLE IV

DEVELOPMENT

Section 4.01: Non-Discrimination

The Developer agrees that it will not discriminate in its employment practices in the course of construction or in the use of, leasing or occupancy of any portion of the Improvements by reason of race, colour, religion or national origin.

Section 4.02: Dislocated Owners, Occupants or Tenants

The Developer agrees to give first consideration to owners, occupants or tenants located in the Urban Renewal Area who have been or will be displaced by reason of the Amended Renewal Scheme. The Developer understands that a Tenant Review Board comprising three members may be appointed by the City to consider cases where any such owners, occupants or tenants feel that they have not been given adequate first consideration. The Developer agrees to give serious consideration to recommendations of the Tenant Review Board.

Section 4.03: Maintenance of Insurance During Construction

At all times during the course of construction of any Improvement or Improvements the Developer shall at its own expense maintain policies of insurance in accordance with Section 3.06.

Section 4.04: Workmen's Compensation

At all times during the course of construction of any Improvement or Improvements the Developer shall at its own expense procure and carry or cause to be procured and carried and paid for full Workmen's Compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any Improvements.

Section 4.05: Construction of Improvements

(a) Compliance with Final Working Drawings and Specifications; Unauthorized Structures and Materials

All work done on the construction of the Improvement or Improvements to be located on any Part or Parts shall substantially conform with the approved Final Working Drawings and Specifications, or the Plans approved by the Review Authority prior to the granting of a lease, except and only to the extent that modifications thereof have been requested by the Developer in writing and have been approved in writing by the Review Authority. In the event that the Developer shall fail to comply with the foregoing requirements, the Review Authority may, after discovery thereof by it, direct in writing that the Developer so modify or reconstruct such portion or portions of the Improvements erected or being erected on the Part or Parts as are not in conformance with the approved Final Working Drawings and Specifications or the said approved Plans or any approved modifications thereof, so as to bring them into conformance therewith. The Developer shall forthwith comply with such a directive and on its failure so to do within a reasonable period of time after such notice, it shall be lawful for the City or its servants, contractors, agents and workmen together with necessary equipment to enter upon the Part or Parts and reconstruct or remove such unauthorized Improvements and execute such other requisite work, all expenses of so doing to be paid to the City by the Developer as a liquidated debt on demand in writing from the Review Authority. If in the course of erecting and completing the Improvements the Developer shall use any materials or execute any works which are found to be unsound or unfit for the purpose intended or which will not be in accordance with any statute, regulations or by-laws or comply with the said approved Final Working Drawings and Specifications or said approved Plans,

the Developer shall immediately upon notice in writing from the Review Authority requiring it so to do remove all such non-complying materials and substitute such other materials as shall be fit and sound for the purpose intended and in conformity with any statute, regulations or by-laws or the said approved Final Working Drawings and Specifications or the said approved Plans and make good, repair and correct any such non-complying materials and shall also repair and make good any defects and omissions in the aforesaid Improvements within such time as may be specified in such notice at its expense. If the Developer shall neglect so to do for a reasonable time after such notice it shall then be lawful for the City or its servants, contractors agents and workmen to remove such non-complying materials and to substitute others therefor and to remove and make good such non-complying improvements and all expenses of so doing shall be paid to the City by the Developer as a liquidated debt on demand in writing from the Review Authority.

(b) Completion

The Developer shall begin the construction of the Improvements on the Part or Parts in accordance with the Final Working Drawings and Specifications or Plans as approved by the Review Authority as soon as reasonably possible after delivery of possession of the Part or Parts and shall, subject to Section 5.07, diligently prosecute to completion the construction of the Improvements on the Part or Parts and shall, subject to the provisions of this agreement complete such construction not later than the latest date for completion of construction as provided in Section 3.04. The Developer, with the approval in writing of the City may temporarily occupy and landscape and improve lands owned by the City adjacent to a Part or Parts then leased by the Developer for the purpose of temporarily enhancing the environs of a developed Part or Parts or for the purpose of a temporary site office, on such

terms and conditions as may agreed upon in writing by the Developer and the City. The Developer shall submit to the Coordinator an estimated construction schedule at the time construction is commenced. Further detailed construction schedules shall be submitted from time to time to the Coordinator until the construction of the Improvement or Improvements has been completed with actual progress shown. In addition the Developer shall submit periodically a written report from the Developer setting out any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts. The Developer agrees at all times to cooperate with the Coordinator and to provide him with such reasonable information as may be required to enable him properly to supervise the network analysis and critical path programme with respect to the Amended Renewal Scheme. The construction of any Improvement or Improvements shall be deemed to be completed when the Review Authority, has, upon the application of the Developer after the completion of such Improvement or Improvements, issued a certificate certifying that such Improvement or Improvements have been completed in conformity with the Final Working Drawings and Specifications, with such modifications, if any, as may have been approved hereunder; provided that such a certificate may be issued notwithstanding the fact that with respect to such areas as have not at that time been leased by the Developer, the floor, wall and ceiling finishes, electrical circuitry and fixtures, partitions and individual outlets for heating, air-conditioning, plumbing and telephone have not been completed, if such areas are properly closed off in a manner acceptable to the Review Authority. No such certificate shall be issued if there is any existing breach by the Developer of any obligation under this agreement or if there is any lien or other claim outstanding in respect of such construction except claims for completion

payments by contractors not exceeding the amounts which the Developer is required to retain under the provisions of The Mechanics' Lien Act and except for such amounts required to be so retained, all accounts for work, services or materials which could give rise to any claim for a mechanics' lien shall have been paid; no building fixtures or equipment on such Part or Parts (save for usual tenants' fixtures normally removeable by them as permitted in the form of lease hereto annexed as Schedule C and to which the Developer does not have title) shall be subject to any conditional sale agreement or to any lien, encumbrance or claim not expressly permitted by the foregoing. Upon application for a certificate of completion the Review Authority shall promptly consider such application and in the event that there are grounds for disapproval, these shall be communicated in writing in detail to the Developer within seven days of the Review Authority having received such application. In the event of such disapproval, the Developer shall within forty days resubmit its application for a certificate of completion which shall be subject to the same conditions as are above set out for an original application. It is understood and agreed that the foregoing provisions relate only to applications by the Developer for a final completion certificate pertaining to the Improvements from time to time and which said application is predicated upon the final completion certificate of the Architect. Nothing in this paragraph shall be deemed to prevent or interfere with the Developer's right to receive advances of moneys to which it is otherwise entitled to obtain on the strength of the certificate or certificates of the Architect.

(c) Right to View

The Coordinator and his authorized representatives shall have the right at all reasonable times to enter upon any Part or Parts and the Improvements being erected thereon to view the state of progress of the same and

to inspect and test material and workmanship and for the purpose ascertaining generally that the provisions of this agreement are being complied with and, with contractors and equipment upon default by the Developer as herein mentioned, to enter upon any Part or Parts and Improvements thereon for the purpose of protecting, completing, repairing and maintaining the same generally.

(d) Disposal of Material

The Developer agrees to comply with the reasonable direction of the City Engineer as to the place of disposal of material excavated from any Part or Parts and the route or routes to be adopted by the vehicles taking such materials from the Part or Parts to the place of disposal and returning to the Part or Parts therefrom.

(e) Mechanics' Liens

The Developer shall throughout the course of construction of the Improvements at its own cost and expense cause any and all mechanics' liens and other liens for labour, services or materials alleged to have been furnished or to have been charged by or for the Developer or any one on its behalf at the Parts or the Improvements, which may be registered against or otherwise affect the Parts or the Improvements, to be paid, satisfied, released, cancelled and vacated within 30 days after the City shall send to the Developer written notice by registered mail of any claim for such lien. Provided, however, that in the event of a bona fide dispute by the Developer of the validity or correctness of any claim for any such lien the Developer shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge

such lien, or providing such other security in respect of such claim as will result in the discharge of such lien provided always that neither the Part or Parts nor the Improvements nor any part thereof, nor the Developer's interest therein shall thereby become liable to forfeiture or sale. The City may, but shall not be obliged to, after the expiration of thirty days after the Developer has received notice as aforesaid discharge any lien filed or registered if in the City's judgment, the Part or Parts or the Improvements or any part thereof or the Developer's interest therein becomes liable to any forfeiture or sale or is otherwise in jeopardy and any amount paid by the City in so doing, together with all reasonable costs and expenses of the City shall be reimbursed to the City by the Developer on demand together with interest at the rate of 9 per cent per annum from the date incurred until paid. Nothing herein contained shall authorize the Developer, or imply any consent or agreement on the part of the City, to subject the City's estate and interest in the Part or Parts and Improvements to any lien.

(f) Construct in Good and Workmanlike Manner

The Improvements shall be of first class quality, shall be constructed expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this agreement and the Developer, through the Architect, shall properly supervise the work.

(g) Progress Certificates

The Review Authority may require the Developer to submit at reasonable intervals, at the Developer's expense, certificates of the Architect of the standing of the Improvements, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained

by the Developer on any contract. The Developer shall also, upon the reasonable request of the Review Authority, furnish copies of certificates furnished to it by contractors or by the Architect in connection with the construction of the Improvements.

(h) By-Law Compliance

The Developer agrees to comply with all laws, by-laws and regulations in force from time to time during the currency of this agreement.

(i) Compliance with Insurance

The Developer agrees not to do or permit or suffer to be done on any Part or Parts or any part or parts thereof anything which may render the policy or policies of insurance void or voidable or (except with the consent in writing of the City which consent may not be unreasonably withheld) make any increased premium payable in respect of such policy.

(j) Repair

The Developer agrees to maintain the Improvements in good order and condition during their construction. If any imperfection shall appear in any part of the Improvements or any accident shall occur thereto, such imperfection or accident shall immediately be made good and repaired by the Developer provided that if the Developer shall;

- (i) within a reasonable time after notice from the Review Authority refuse or neglect to make good and repair any such imperfections or accidents, or
- (ii) cause or suffer or permit to be caused or suffered any damage or injury to the City's works, roads or services or to adjoining works, roads or services, the City by its servants, contractors, agents and workmen may execute any necessary works and the cost thereof (as certified by the Review Authority) shall

be paid to the City by the Developer within twenty-one days of a written demand in that behalf.

(k) Insurance Proceeds

In the event that the Improvements or any part thereof at any time during their construction are destroyed or damaged by fire or other risk covered by insurance and as often as the same may happen, the Developer covenants and agrees that all moneys payable by virtue of such insurance policy or policies shall forthwith be expended and applied in re-building, reinstating, repairing and completing the Improvements in a good and workmanlike manner and in accordance with this agreement, and in case the moneys received in respect of such insurance shall be insufficient for the purpose, the Developer shall make good any deficiency.

(l) Services and Utilities

The Developer, in addition to the easements, if any, to be provided in the ground lease applicable to the Phase in question shall permit access to any Part or Parts to the City, Hamilton Hydro Electric System, United Gas Limited, The Bell Telephone Company of Canada and the operator of any central heating and cooling system for the purpose of executing any works required to construct, lay down, disconnect, alter, repair, clean or maintain any of such systems either serving or to serve the Improvements or running through any Part or Parts. For the purpose of connecting the systems serving or to serve the Improvements or the Part or Parts, the Developer agrees to coordinate the work to be performed by it hereunder with that to be performed by the operators of such systems. None of the cost of any such works serving and within the Commercial Sites and the connection thereof with services at the periphery of the Commercial Sites shall be borne by the City. The Developer agrees

that it shall not interfere with the services located or to be located in the easements, if any, to be provided in the ground lease applicable to the Phase in question and should any interference occur to pay for any damage which results therefrom.

The Developer further agrees to construct its Improvements on the north side of King Street West and on the west side of James Street North so as to accommodate the tunnels and/or overpasses which are to be constructed by the City. The Developer agrees to construct at its cost the necessary approaches, abutments and entrances on the north side of King Street West and on the west side of James Street North for such tunnels and for such overpasses and agrees to pay to the City the sum of \$25,000 toward the cost of such construction at the time such construction is commenced by the City. Should the Developer elect, with the approval in writing of the City to construct any such tunnels and/or overpasses at its expense, the City will cause to be constructed at its cost the necessary approaches, abutments and entrances on the south side of King Street and on the east side of James Street and in the event of the Developer constructing such tunnels and/or overpasses, they shall upon completion be sold to the City for \$1.00 each. The Developer further agrees to cooperate with the City so as to integrate and coordinate its Improvements on the Commercial Sites with the structures and uses existing or proposed in the remainder of the Urban Renewal Area and the surrounding area, including, but without limiting the generality of the foregoing, the Hamilton Central Stall Holder's Farmers' Market and the Hamilton Public Library, so that its work and that of the others may proceed as expeditiously and efficiently as possible. The Developer agrees

to design and construct each Phase and its Improvements so as to accommodate the integration thereof with other Phases with a minimum of cost and inconvenience whether such other Phases are constructed by the Developer or others and to provide, if necessary, within a Phase, electrical, heating and cooling, sewer and water facilities and connections of sufficient capacity (the need for such facilities and connections and their capacity, if required, to be determined by the Review Authority) to accommodate the needs of a subsequent Phase or Phases.

(m) Minimization of Interference with Other Uses in Urban Renewal Area during Development

The Developer agrees to construct the Improvements so as to cause a minimum of interference with the other uses in the Urban Renewal Area and with such uses as are continuing until the entire Commercial Sites area is developed employing during the course of construction first-class and prudent construction procedures. The Developer will use its best efforts to ensure the continuous use, with a minimum of disruption or interference because of dust, of the said Farmers' Market and the operation of the Market Ramp Garage and to make available with a minimum of interference, at the earliest possible dates, the maximum amount of completed Publicly Usable Open Space that construction requirements permit.

(n) Signs and Removal of Litter

The Developer agrees not to permit nor suffer to be done in or upon any Part or Parts of which it has possession or any part thereof anything which may be or become a danger or nuisance or cause damage to any owners, tenants, or occupiers of adjacent lands and not to use nor to permit or suffer to be used any part of any Part or Parts or Improvements or hoardings for advertising display purposes or for the display of any notices or signs except such as may be permitted

in writing by the Review Authority and in particular not to use any Part or Parts for any purpose whatsoever except the construction of the Improvements as provided for herein. It further agrees forthwith to remove from any Part or Parts and any adjoining lands over which it may have a temporary licence, all materials and rubbish, save for such materials as may be required for the construction of the Improvements and to keep the Part or Parts at all times in an orderly and tidy fashion in keeping with good construction practice.

(o) Hoardings

The Developer shall erect and maintain in accordance with the by-laws of the City such hoardings as may be required during the course of excavation and construction of the Improvements.

(p) Indemnity

The Developer shall indemnify and keep indemnified the City from and against all legal liability in respect of loss, damage actions, suits, proceedings, claims, costs, demands, and expenses in any way arising out of the construction of the Improvements unless such liability arises through the negligence of an officer, employee or servant of the City while acting within the scope of his duties or employment.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.01: Parking

The Developer shall be required to provide or cause to be provided at its expense for each Phase the minimum number (as set out in Schedule B hereto) of underground parking spaces (each space to be of a minimum width of nine feet and a minimum

length of twenty feet) together with suitable access thereto and egress therefrom.

Section 5.02: Public Library and Farmers' Market

The Developer agrees that the City shall have the right to cause the Developer to construct space for new library and Hamilton Central Stall Holders' Farmers' Market facilities on Part Seven at the location shown on Schedule B, subject to the approval by the City of Final Working Drawings and Specifications and detailed cost estimates and subject to the approval by the City and the Developer of the financing thereof on satisfactory terms, of the form and substance of the lease to the Developer of Part Seven and of the sublease thereof for such library and market. Such sublease shall be for a period expiring on October 31st, 2069. The City may require that the construction of such library and market be put to public tender. Parking, if any, in connection with Phase Seven, shall be provided on such basis as may be agreed upon by the City and the Developer. The Developer agrees to construct its contiguous improvements so as to permit economic and practicable construction of underground parking for Phase Seven, if required. The financing of the approved cost of construction of the library and Hamilton Central Stall Holders' Farmers' Market shall be arranged, for such term as may be agreed upon, on an amortized basis fully to repay the approved cost of construction together with interest thereon at such rate as may be agreed subject to the right of prepayment at any time of the principal amount then unpaid plus accrued interest without notice or bonus. The basic annual rent to be paid to the Developer shall be the full amount of the amortized principal and interest payments relative to the said approved capital cost. Should the right of prepayment be exercised or at the end of the period of amortization the basic annual rent shall be reduced to \$1.00 per year for the remainder of the sublease period. In addition to such basic annual rent there shall be paid to the Developer the proportionate share of amounts

to be agreed upon for heating, air conditioning, electricity, water, janitorial service and maintenance with respect to the premises to be sublet. If such a sublease is entered into, should the Developer under its lease be required to pay to the City ground rent in such amount as may be agreed upon by the City, CMHC and Ontario, any such amount shall be paid as additional rent to the Developer under the sublease. Notwithstanding anything herein contained, the City may at any time upon notice in writing to the Developer develop Phase Seven independently from the Developer for public purpose in such manner as it may decide, and in such event the Developer shall have no further rights or obligations with respect to Phase Seven, including the leasing thereof. If the City should decide that Phase Seven should be developed for non-public purposes, the opportunity so to develop Phase Seven for non-public purposes shall first be offered in writing to the Developer and if the City and the Developer cannot agree on the terms and conditions of such development within six months or such offer, the City shall be free to develop Phase Seven to non-public purposes independently of the Developer.

Section 5.03: Central Heating

The City agrees to permit the Developer to participate in its negotiations with respect to the provision of a central heating system, recognizing that the Developer and others may wish to become users and also that easements and approvals will be required by the City and other governmental authorities.

Section 5.04: Assignments and Subletting

The Developer agrees that it shall not, without the written consent of the City first had and obtained assign this agreement in whole or in part except as specifically provided for herein or except for the financing, mortgaging or subletting provided for in the form of lease hereto annexed.

Section 5.05: Bankruptcy, etc:

If the Developer shall make an assignment for the benefit of creditors, or assign in bankruptcy, or take the advantage in respect of its own affairs of any Statute for the relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors; or if a receiving order is made against the Developer which remains unstayed for a period of thirty (30) days; or the Developer is adjudged bankrupt or insolvent; or if a liquidator or receiver of any property of the Developer is appointed by reason of any actual or alleged insolvency or any default of the Developer under any mortgage or other obligation and such appointment remains unstayed for a period of thirty (30) days; or if the interest of the Developer in the Part or Parts or Improvements is liable to be taken or sold under any writ or execution or other like process which shall remain undischarged for thirty (30) days, then the occurrence of any such contingency shall be deemed to be a breach of this agreement and, at the option of the City, this agreement may be terminated and the Developer shall quit and surrender the Part or Parts and the Improvements to the City and shall, notwithstanding, remain liable for any loss or damage suffered by the City.

Section 5.06: Default

If the Improvements on any Part shall not be completed fit for use and occupation by the completion dates provided for in Section 3.04 hereof, or if the Developer shall not commence or proceed with the same with proper diligence, or in case the Developer shall in other ways substantially fail to perform and observe the stipulations and conditions on its part herein contained, or fail to remedy the breach of any of the said stipulations and conditions within such times as may be specifically provided for, or if no such times are provided for then within such time as may reasonably be required so to do, after receipt of notice in writing to that effect to the Developer, Guarantor and Mortgagee, the City may, subject as hereinafter provided, re-enter the Part or Phase in question and any Improvements thereon and may hold

and dispose thereof as if this agreement had not been entered into and without making the Developer any compensation or allowance for the same. This agreement shall thereupon determine with respect to:

- (i) the Part or Phase in question and
- (ii) any other Part or Phase not then leased (unless the Part of Phase in question with respect to which the default has occurred was leased, with the agreement of the City pursuant to the provisions of Section 3.01 (b) hereof, to a corporation in which none of the Developer, the Guarantor or The Standard Life Assurance Company has any equity interest or to a partnership or consortium of persons and/or corporations no partner or member of which is the Developer, the Guarantor or The Standard Life Assurance Company)

without prejudice to any right of action or remedy of the City for the recovery of any right or moneys due to it from the Developer or in respect of any breach, non-observance or non-performance by the Developer of any agreements, conditions and stipulations herein contained, and the City shall be free to complete the Amended Renewal Scheme or dispose of any interest in the Part or Parts or Improvements thereon in such manner as it may see fit. The Developer shall, at its expense, at the option of the City, restore the Part or Parts which were then held by it by lease to the condition in which they were at the time of delivery of possession, filling any excavation and removing any Improvements as may be directed by the City. Provided that no re-entry, forfeiture or termination of this agreement by the City shall be valid as against a mortgagee of the leasehold interest of a Part, approved in accordance with the form of lease hereto annexed as Schedule C hereto, and who has notified the City of its interest and address as hereinafter provided, unless the City shall first have given the mortgagee notice of the default or contingency entitling the City to re-enter, terminate or forfeit this agreement and of the City's intention to take such proceedings, and requiring the mortgagee to cure the default. The mortgagee shall thereafter have such time as may be reasonably necessary to cure the default, which shall include the time otherwise permitted to the Developer

to cure such default. If the mortgagee, before forfeiture under this Section 5.06, or immediately after forfeiture under Section 5.05, makes any and all payments and does and performs all acts or things which may be necessary or required to prevent a forfeiture of this agreement and tenders to the City an agreement executed by it in form and substance satisfactory to the City binding such mortgagee to carry on and complete the Improvements, such mortgagee shall thereupon be subrogated to all the rights of the Developer hereunder. The City agrees that if such an approved mortgagee notifies it that such mortgage has been executed, the City will send to such mortgagee at such address or addresses as it may from time to time specify, copies of all written notices or demands which it may send pursuant to this agreement or otherwise.

Section 5.07: Force Majeure

In addition to the provisions contained in paragraphs 3.03 and 3.04, if either the City or the Developer is delayed in the completion of any other action required to be taken by either of them respectively by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other casualty or by any other matter not within their control and not caused by their default or act of commission or omission and not avoidable by reasonable effort or foresight, then the respective times for the completion of such actions shall be extended for a period or periods equal to the time lost due to such delays.

Section 5.08: Arbitration

If any dispute shall arise between the City and the Developer as to the reasonableness of the requirements with respect to insurance, or the amount of the proceeds thereof to which the Developer is entitled pursuant to this agreement, or any decision of the Review Authority or any other matter referable to arbitration pursuant to the terms of this agreement, any such dispute shall be decided by a single Arbitrator pursuant to the provisions of The Ontario Arbitrations Act, Chapter 18, Revised Statutes of Ontario, 1960, and amendments thereto or any re-enactment thereof and amendments thereto.

Section 5.09: Non-Waiver

No waiver by the City or the Developer of the breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenants or provisions. No waiver shall be effective unless the same is in writing.

Section 5.10: No Merging

Notwithstanding the entering into any of the leases in forms annexed hereto, this agreement shall remain in full force and effect with respect to anything remaining to be performed or observed hereunder on the part of the Developer with respect to a particular Phase not provided for in the lease.

Section 5.11: Guarantee

For valuable consideration the Guarantor, upon the terms and conditions herein set forth, hereby unconditionally guarantees and agrees with the City that all the covenants, agreements and other obligations of the Developer under this agreement shall be fully performed in connection with any Phase with respect to which the Developer has entered a lease and that any payments by way of additional rent as provided for in subsection 2(b) of Section 3.06 shall be made. Such guarantee shall be on the following terms:

- (a) The liability of the Guarantor to the City shall be for all purposes as if the Guarantor was a primary obligor hereunder and not merely a surety for the obligations of the Developer, and the City shall not be obliged to or exhaust any recourse which it may have against the Developer or any other person before being entitled to claim against the Guarantor;
- (b) No dealings between the City and the Developer of whatsoever kind, whether with or without notice to the Guarantor shall exonerate the Guarantor in whole or in part and in particular and without limiting

the generality of the foregoing, the City may modify or amend this agreement or any obligation of the Developer, take securities, release securities or other guarantees for performance by the Developer and otherwise deal with the Developer, this agreement and any other persons the City may see fit without affecting, lessening or limiting in any way the liability of the Guarantor;

- (c) Any account settled or stated, or any other settlement made between the City and the Developer, and any determination made pursuant to any provision of this agreement which is expressed to be binding upon the Developer shall be binding upon the Guarantor;
- (d) The Guarantor shall make payment to the City of any amount properly payable by the Developer to the City but unpaid upon demand, and shall on demand perform any other obligations under this agreement which the Developer has failed to perform and any demand made by the City upon the Guarantor shall be deemed to have been effectually made if notice has been sent pursuant to the provisions of Section 5.12 hereof;
- (e) No assignment of this agreement unless agreed to by the City under the terms of this agreement shall affect the guarantee;
- (f) Nothing whatsoever except the performance of all the obligations of the Developer under this agreement in connection with any Phase with respect to which it has entered a lease shall discharge the Guarantor of this guarantee.

Provided that and notwithstanding anything herein contained to the contrary, should all of the Improvements contemplated by any particular Phase with respect to which the Developer has entered a lease have been completed in accordance with the provisions of this agreement pertaining to such Phase thereupon and thereafter this guarantee shall be immediately of no further force and effect with respect to such Phase except as to any

obligations still outstanding under subsection 2(b) of Section 3.06 hereof and the City shall provide the Guarantor with a release therefrom.

Section 5.12: Notice

Any notice in writing required or permitted to be given to the Developer hereunder shall be sufficiently given if delivered to an officer of the Developer personally or mailed by registered mail, postage prepaid, addressed to Greater Hamilton Developers Limited, Fourth Floor, 39 James Street South, Hamilton 10, Ontario. Any notice mailed as aforesaid shall be deemed to be given to the Developer on the first business day following the date of such mailing.

Any notice in writing required or permitted to be given to the Guarantor hereunder shall be sufficiently given if delivered to an officer of the Guarantor personally or mailed by registered mail, postage prepaid, addressed to Yale Properties Limited, 2015 Peel Street, Montreal 110, Quebec, Canada. Any such notice mailed as aforesaid shall be deemed to be given to the Guarantor on the first business day following the date of such mailing.

Any notice in writing required or permitted to be given to the City shall be sufficiently given if delivered to the City clerk personally or mailed by registered mail, postage prepaid, addressed to the Corporation of the City of Hamilton, attention the City Clerk, City of Hamilton, City Hall, Hamilton, Ontario. Any such notice mailed as aforesaid shall be deemed to have been given to the City on the first business day following the date of such mailing.

Any party may at any time give notice to the other parties of any change of address and the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party.

Section 5.13: Time of Essence

Time is of the essence of this agreement, save as herein otherwise specified.

Section 5.14: Amendments

This agreement may not be modified or amended except by an instrument in writing of equal formality herewith executed by the parties hereto or by their successors or assigns.

Section 5.15: Binding Effect

It is further agreed and declared that this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns as limited in this agreement.

Section 5.16: Further Assurances

The parties hereto agree that each of them shall do or complete all such acts, matters and things as may be reasonably requisite on their respective parts to assist in the performance and in the fulfilment of all the terms and conditions hereof.

Section 5.17: Counterparts

This agreement may be executed in several counterparts each of which when executed by the parties shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

THE CORPORATION OF THE CITY OF HAMILTON

by _____

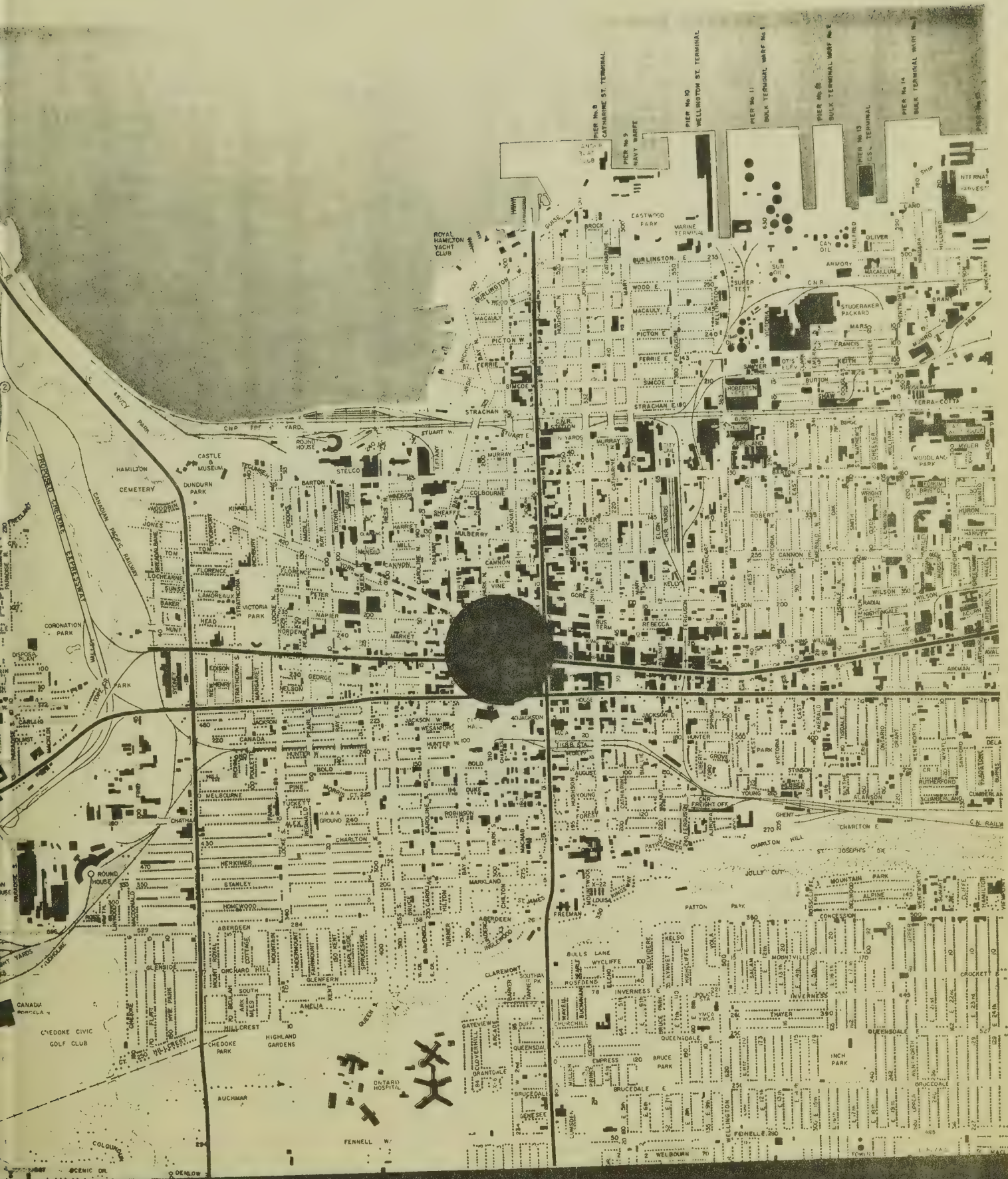
GREATER HAMILTON DEVELOPERS LIMITED

by _____

YALE PROPERTIES LIMITED

by _____

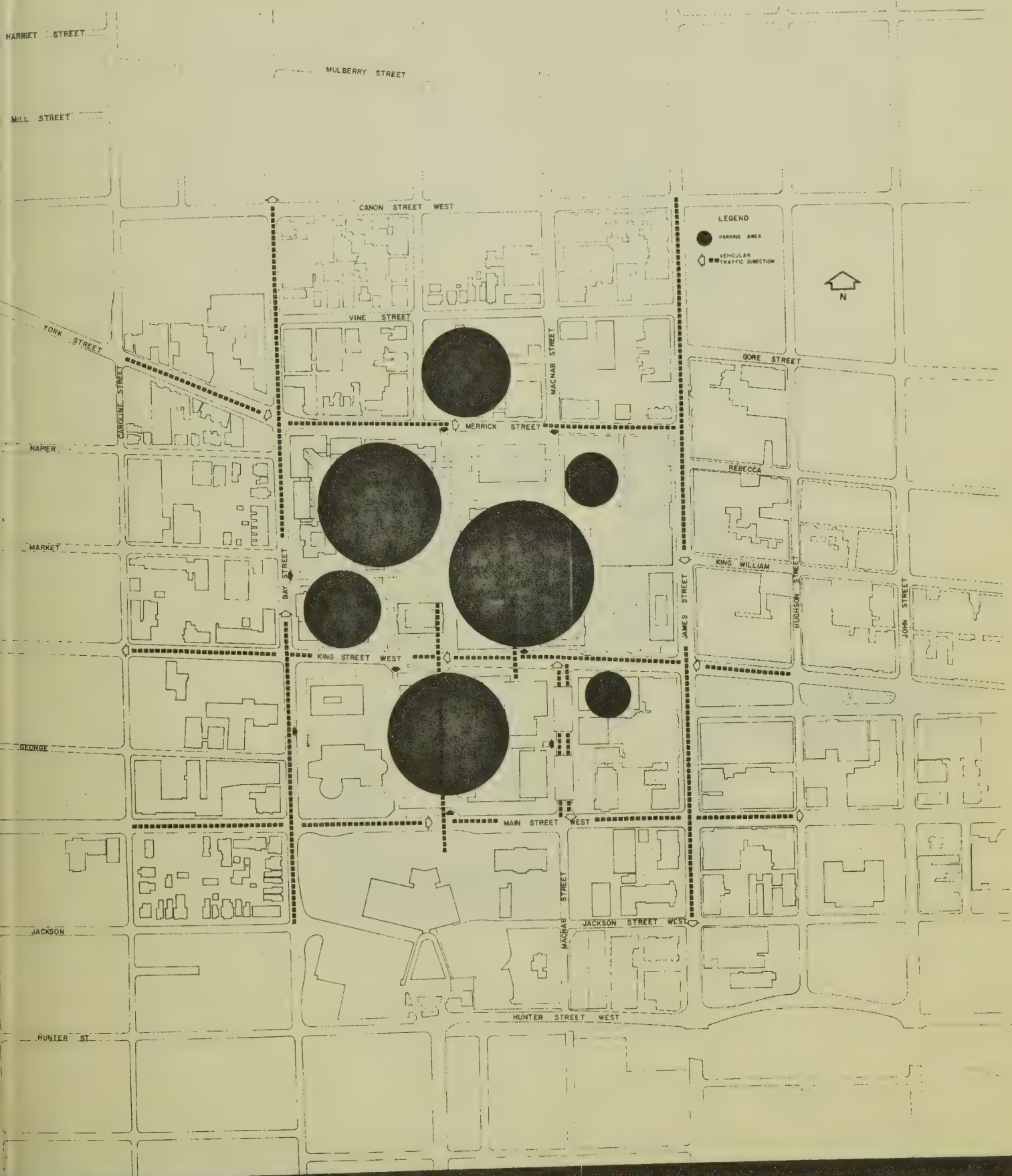
SCHEDULE B



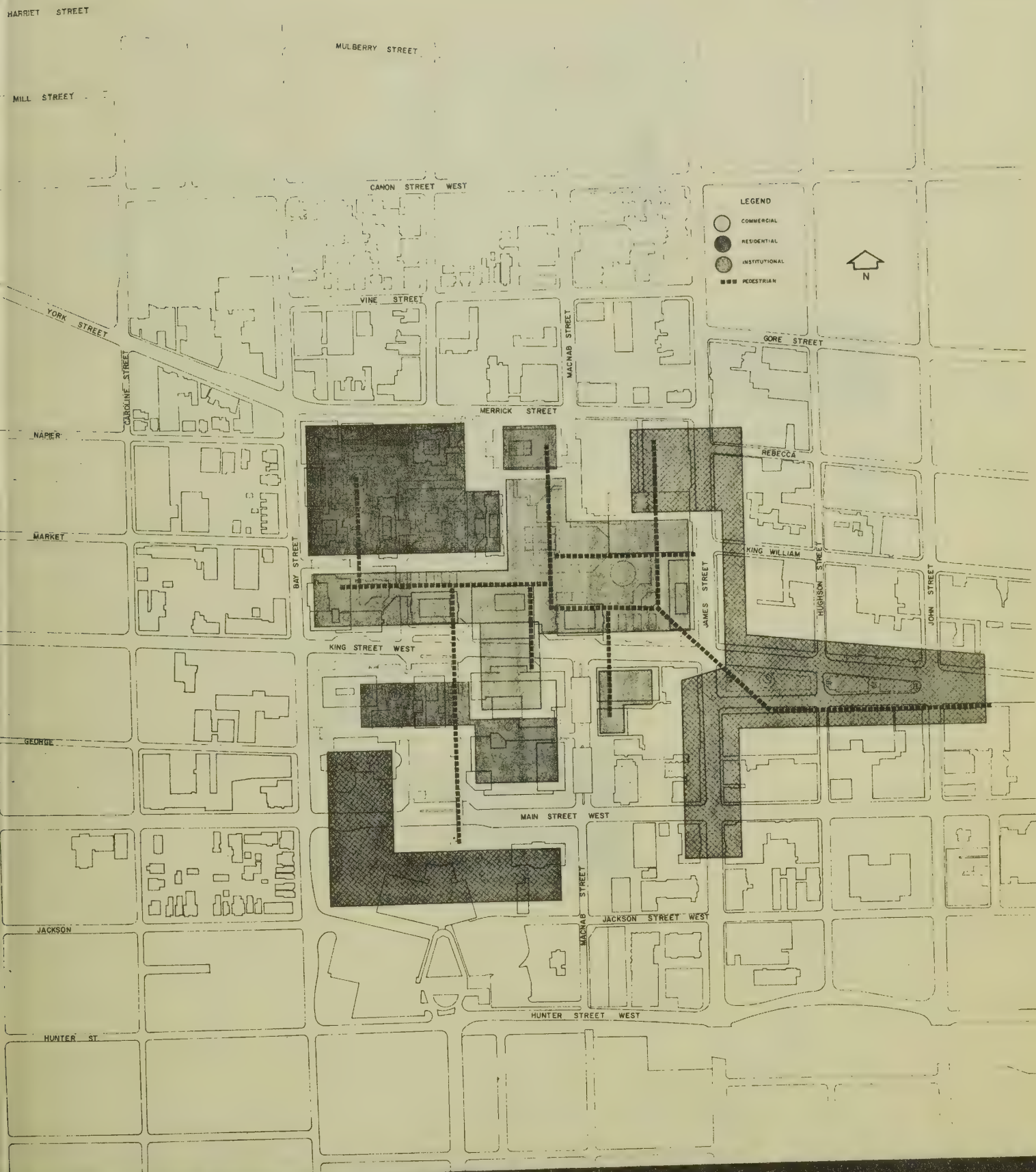
CIVIC SQUARE DEVELOPMENT **ARTHUR C. F. LAU,**
HAMILTON, ONTARIO. **ARCHITECT.**



PLOT PLAN

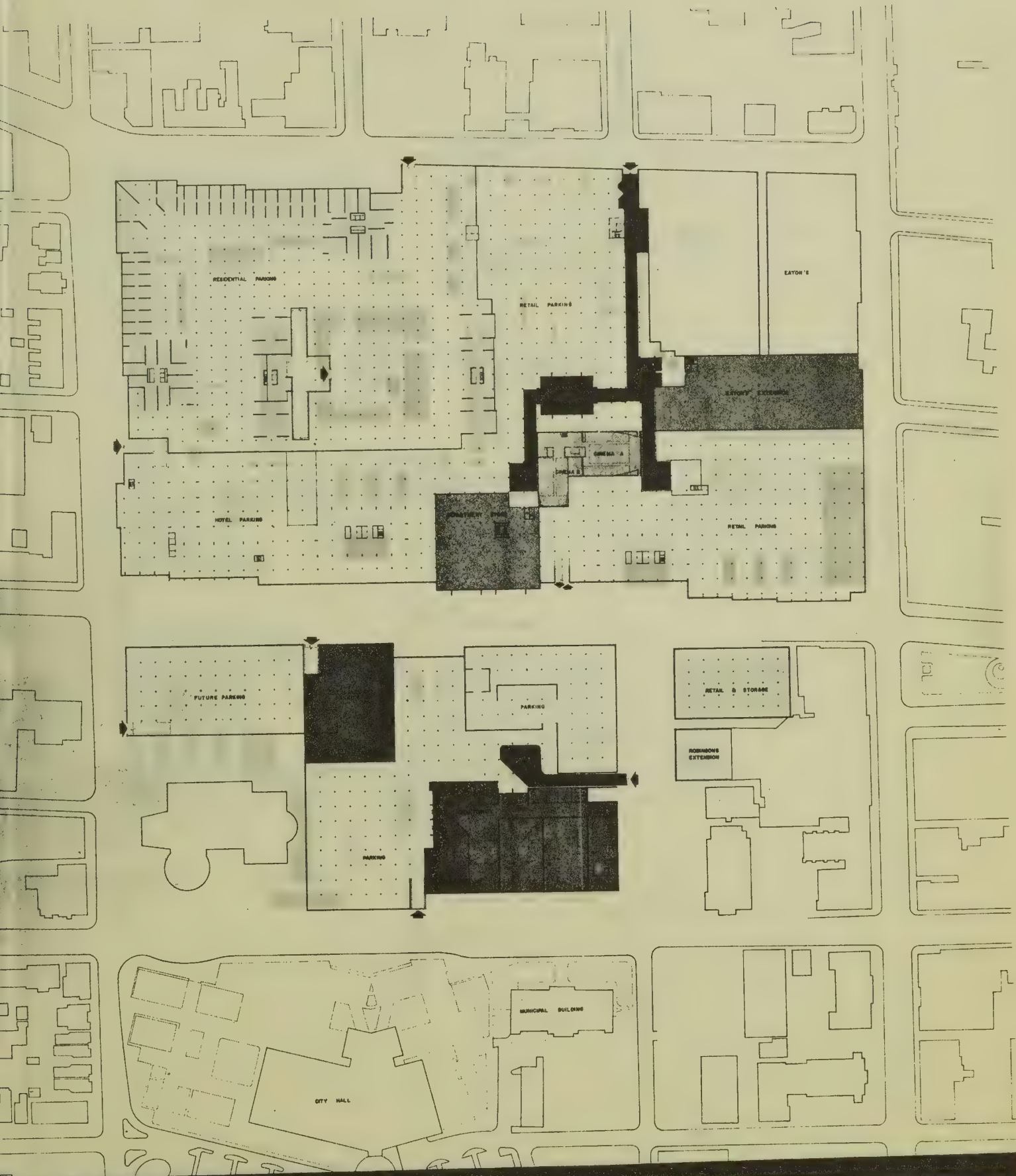


VEHICULAR CIRCULATION



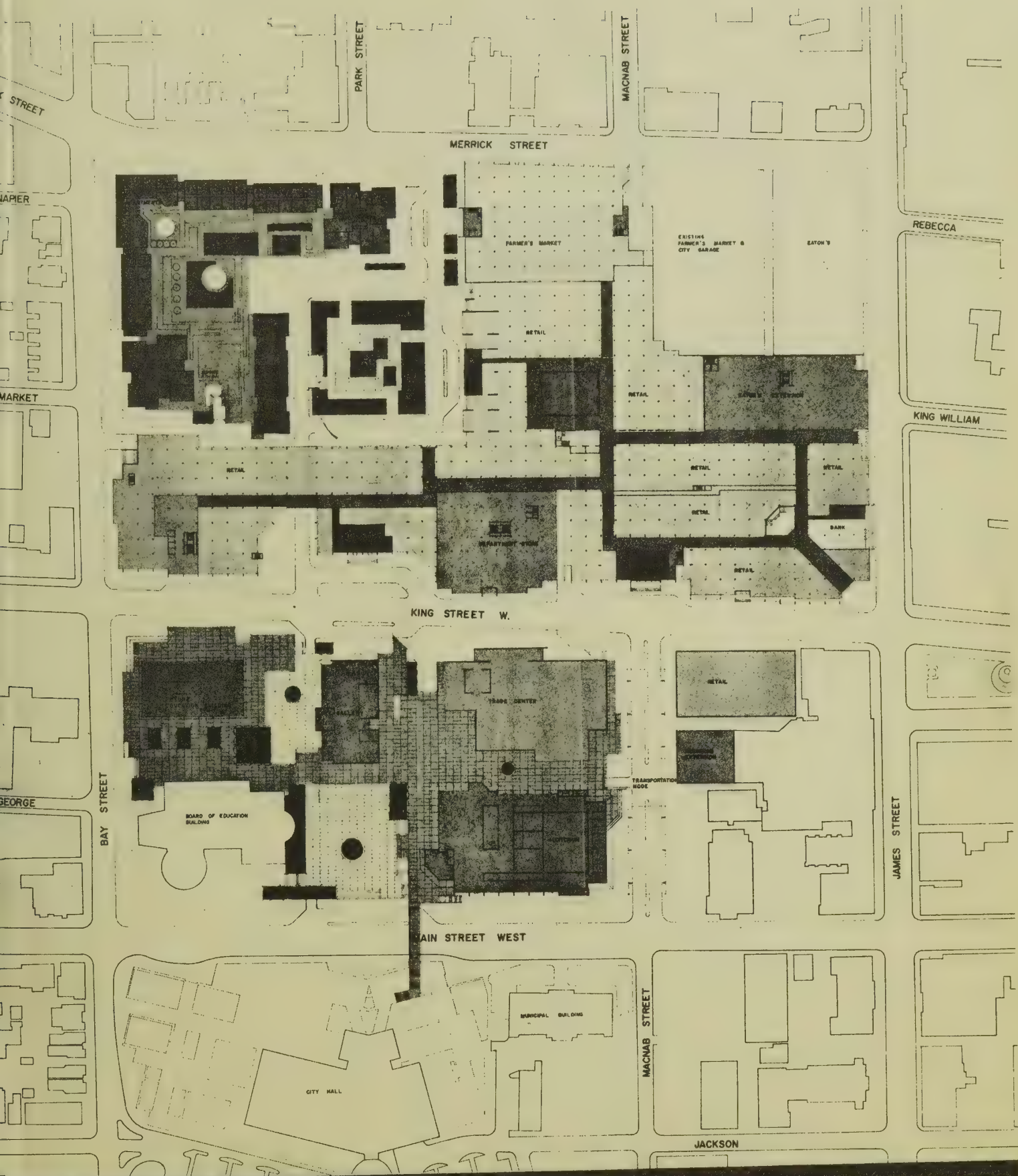
ZONING PLAN

800 100 0 80 100



BASEMENT LEVEL

100 50 0 25 10

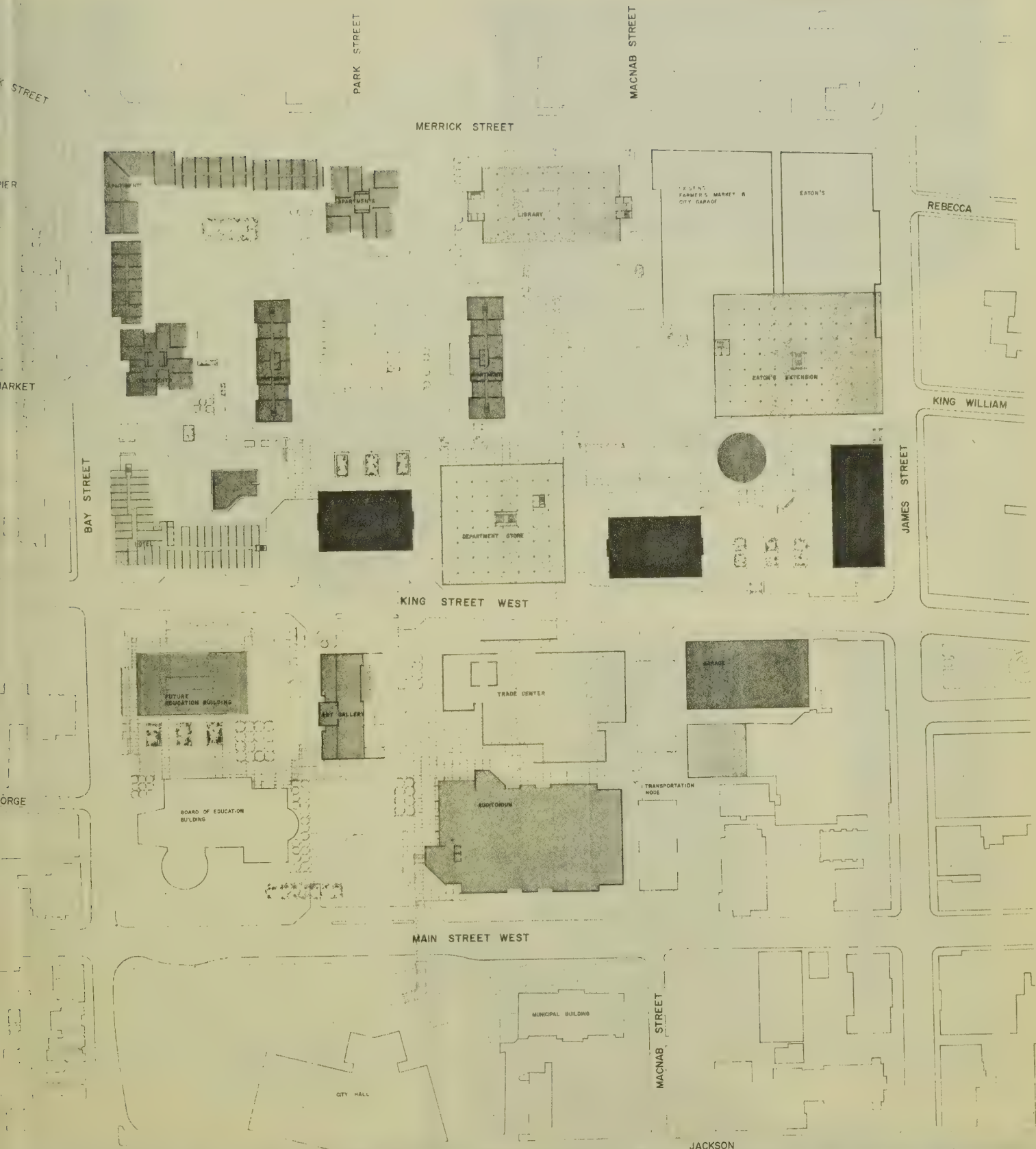


CONCOURSE LEVEL



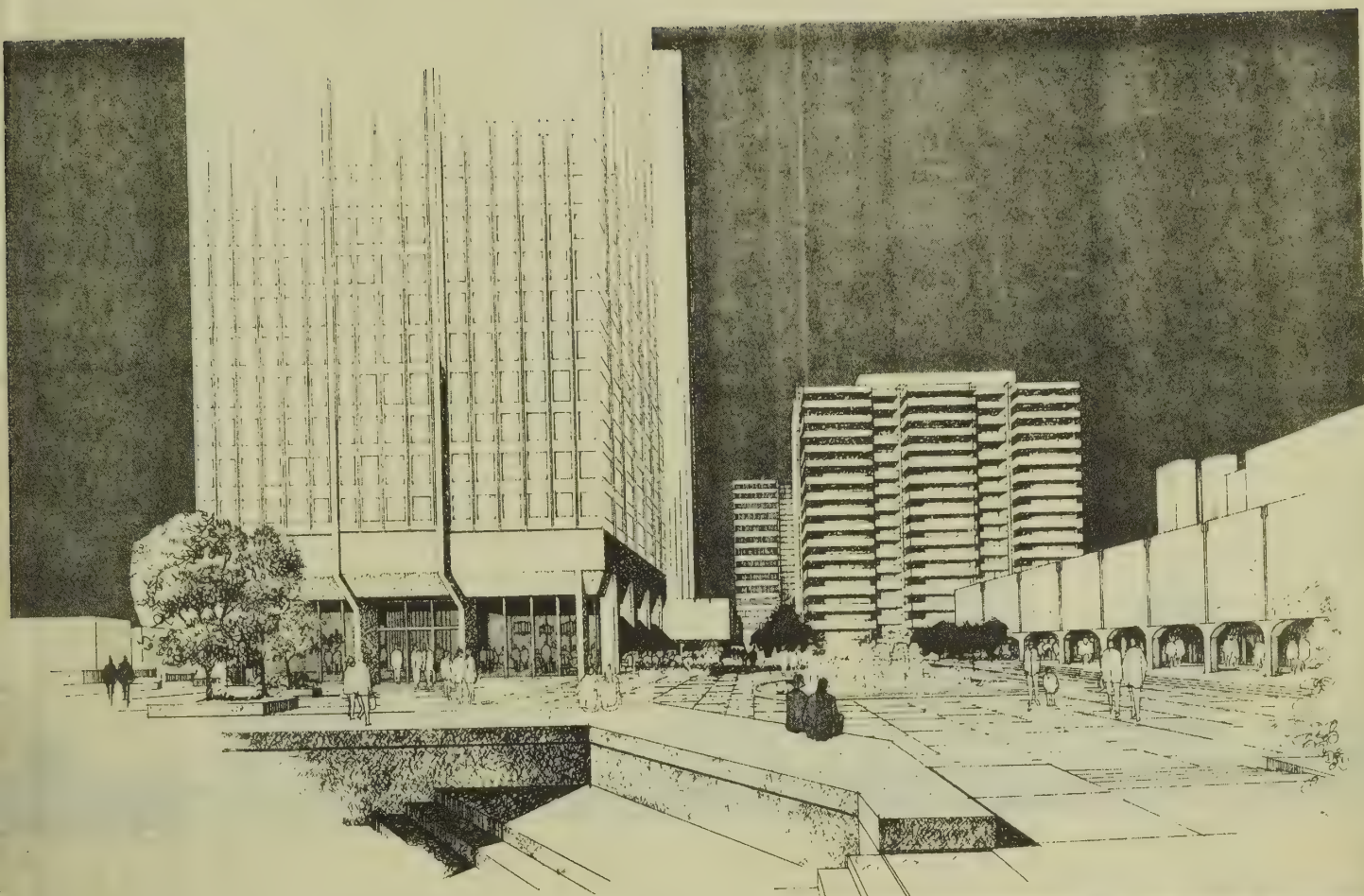


PLAZA LEVEL

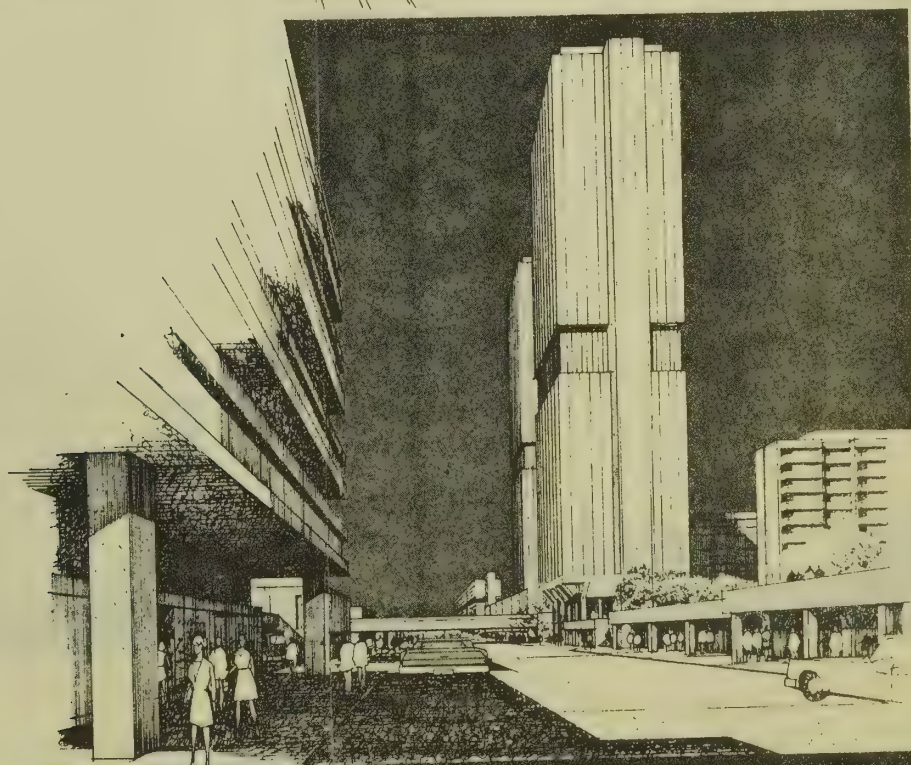


FIRST FLOOR LEVEL





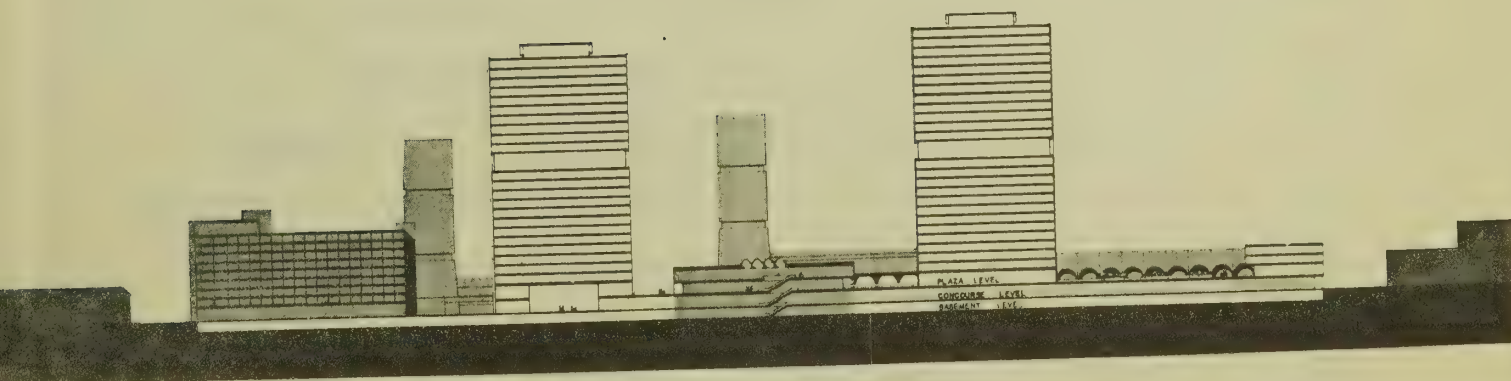
Plaza view



view along
King Street



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SCHEDULE "C"

GROUND LEASE FOR PHASE ONE

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GROUND LEASE

NOW THEREFORE in consideration of the rents hereby reserved and the covenants herein contained on the part of the

Lessee, the Lessor grants this lease to the Lessee on the terms hereof and in consideration of the demise and the covenants of the Lessor, the parties hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01: Defined Terms

For the purpose of this lease and of all indentures, leases, or other instruments supplemental hereto, which may confirm or amend this lease pursuant to its provisions, the following expressions shall have the meanings respectively hereinafter ascribed to them in this Section 1.01:

- (a) "Development Agreement" shall mean the agreement entered into between the Lessor, Greater Hamilton Developers Limited and the Guarantor as of the day of , 1970 and to which the form of this lease was annexed as Schedule C.
- (b) "demised premises" shall mean the lands described in Schedule A hereto together with such other lands which may pursuant to the terms of the Development Agreement, from time to time hereafter be added to the land so described, together with any lands or interest in lands or easement or right in the nature of an easement which pursuant to Article XIV hereof or pursuant to amendments to the Development Agreement, from time to time may be added to the lands so described, less any lands or interest in lands or easement or right in the nature of an easement which may, pursuant to the said Article XIV, from time to time hereafter be excepted from the provisions of the lease;
- (c) the "first period of the term" shall mean the period beginning on the date on which the Lessee is entitled to take possession of the demised premises and ending on the 31st day of October, 2015;
- (d) the "second period of the term" shall mean the twenty-year

period beginning on the 1st day of November, 2015 and ending on the 31st day of October, 2035;

- (e) the "third period of the term" shall mean the twenty-year period beginning on the 1st day of November, 2035, and ending on the 31st day of October, 2055;
- (f) the "final period of the term" shall mean the fourteen-year period beginning on the 1st day of November, 2055 and ending on the 31st day of October, 2069;
- (g) "basic rent" as of any particular time shall mean the net basic annual rental provided for in this lease at the rate specified in Article III of this lease during any of the periods referred to in subsections (c), (d), (e) and (f) of this Section 1.01 exclusive of the other and additional payments to be made by the Lessee as hereinafter provided;
- (h) "lease" or "this lease" shall mean this indenture including the Schedules as originally executed and delivered, or if amended or supplemented, as so amended or supplemented inclusive of amendments or additions to the Development Agreement which by their terms affect this lease;
- (i) "mortgage" shall mean any first mortgage or mortgages by the Lessee of the leasehold interest which is created by this lease and includes any deed of trust and mortgage securing bonds or debentures;
- (j) "mortgagee" shall mean any mortgagee or mortgagees under a mortgage as above defined, and includes any trustee for bondholders under a deed of trust and mortgage securing bonds or debentures;
- (k) "net rentable area" shall mean
 - (i) in the case of office, banking, cinema, and other premises not specifically hereinafter defined the area computed by measuring to the inside finish of permanent building walls including all areas within outside walls deducting therefrom stairs, underground areas devoted exclusively to parking (provided that the exception from net rentable area of underground areas devoted exclusively to parking

shall only be for the first period of the term; thereafter they shall be included in net rentable area), floors devoted exclusively to mechanical purposes, elevator shafts, flues, stacks, pipe shafts and vertical ducts with their enclosing walls but including all washrooms, public, service and kitchen areas, janitor's closets and electrical closets within and exclusively serving a floor. No deductions shall be made for columns and projections necessary to the building.

- (ii) in the case of retail and other commercial premises all the area computed by measuring from the inner surfaces of the outer building walls and from the inner surface of corridor and other permanent partitions and to the centre of partitions that separate the premises from adjoining rentable areas. No deduction shall be made for any areas inside the building line or for columns or projections necessary to the building. No addition shall be made for malls or storage passageways.
- (iii) in the case of areas below grade if the rentable area extends beyond the building line below grade the area calculated by measuring from the curtain wall or finished surface of the retaining wall and from the inner surface of corridor and other permanent partitions and the centre of partitions that separate the adjoining rentable areas. If the rentable area is entirely inside the building line the measurement shall be made from the inner surface of building walls to the inner surface of corridor and other permanent partitions and to the centre of partitions that separate the adjoining rentable areas. No deductions shall be made for columns, projections or footing stones necessary to the building. Provided that no rental shall be payable with respect to areas below grade to the extent that such areas are devoted exclusively to parking (provided that the exception from net rentable area of underground areas devoted exclusively to parking shall only be for the first

period of the term; thereafter they shall be included in net rentable area), building services and mechanical facilities, loading ramps or storage ancillary to another use within the net rentable area.

The Lessor shall be provided by the Lessee with such information and drawings so as to enable it to inspect the Improvements for the purpose of checking the calculation of net rentable area determined on the aforesaid bases, and if the Lessor and Lessee disagree on such calculation it shall be subject to arbitration pursuant to Article XVII hereof.

- (l) "Improvements" shall include the office building, banking pavilion, shopping promenades, cinemas, plazas, malls, parking facilities, Publicly Usable Open Space and other buildings, works, structures and facilities whether free standing or otherwise, ancillary thereto or connected therewith, all fixed plant machinery and equipment and including landscaping and interior and exterior decoration required to be constructed by the Lessee on the demised premises in accordance with the provisions of the Development Agreement;
- (m) "Publicly Usable Open Space" shall mean those areas shaded pink on Schedule B hereto;
- (n) "Urban Renewal Area" shall mean the redevelopment area designated by By-law No. 10781 as amended by By-law No. 66-76 enacted by the Council of the City of Hamilton on the 29th day of June, 1965 and the 22nd day of February, 1966, respectively and such changes in such area as may be lawfully made from time to time.

Section 1.02: Interpretation

The captions and headings in this lease are inserted for convenience of reference only and do not define, limit or enlarge the scope, meaning or intent of any provision. This lease shall be interpreted and governed by the laws of the Province of Ontario. All of the provisions of this lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

ARTICLE II

PURPOSE OF LEASE

Section 2.01: Purpose

The parties understand and agree that this lease is entered into for the purpose of implementing the provisions of the Development Agreement and its intent as set out in Section 2.01 thereof as they relate to the demised premises.

Section 2.02: Approvals

The parties acknowledge and agree that Ontario Municipal Board and other approvals may be required with respect to this lease and the Lessor and the Lessee agree to cooperate in the obtaining of such approvals.

ARTICLE III

DEMISE, TERM, RENT AND RENEWAL

Section 3.01: Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid observed and performed, the Lessor hereby demises and leases to the Lessee the demised premises subject to and together with the rights and easements reserved to the Lessor in Schedule C hereto.

Section 3.02: Term

To have and to hold the demised premises from date on which the Lessee is entitled to take possession of the demised premises and from thenceforth next ensuing and fully to be complete and ended on the 31st day of October, 2069 subject to the provisions hereof with respect to prior termination.

Section 3.03: Rent

Yielding and paying unto the Lessor, its successors and assigns, yearly and every year:

- (a) during the first period of the term a basic rent in equal monthly instalments in advance which shall be the greater of (i) that amount calculated by multiplying the number of square feet of the demised premises which have been leased to the Lessee pursuant to the provisions hereof by 48¢ or (ii) that amount calculated by multiplying the number of square feet of the demised premises which have been leased to the Lessee by 12¢ and adding thereto an amount calculated by multiplying the number of square feet of net rentable area of Improvements built when the same are deemed to be completed for assessment purposes by 10¢; the said basic rent shall be recalculated as often as may be required until the completion of the Improvements in order to make the requisite proportionate monthly adjustments. If the net rentable area of the Improvements is diminished in the event of damage or destruction either before or after the completion of the Improvements, the basic rent then applicable shall not abate or diminish;
- (b) during the second period of the term an annual rent in equal monthly instalments in advance equal to the greater of
 - (i) the annual rent payable during the last year of the first period of the term, or
 - (ii) the ground rent value computed in accordance with Section 3.04 as of six months prior to the end of the first period of the term;
- (c) during the third period of the term an annual rent in equal monthly instalments in advance equal to the greater of
 - (i) the annual rent payable during the last year of the second period of the term, or
 - (ii) the ground rent value computed in accordance with Section 3.04 as of six months prior to the end of the second period of the term;
- (d) during the final period of the term an annual rent in equal monthly instalments in advance equal to the greater of

- (i) the annual rent payable during the last year of the third period of the term, or
- (ii) the ground rent value computed in accordance with Section 3.04 as of six months prior to the end of the third period of the term.

Section 3.04: Determination of Ground Rent Value

- (a) Ground rent value for the purposes of Subsection (b) of Section 3.03 shall mean the market rental of the demised premises determined as of the relevant date, having regard to the term then remaining, such determination to be based on the assumption that the demised premises are vacant lands, free from encumbrance and that they may lawfully be used for the purposes for which they are then actually being used and to the density to which the Improvements have then actually been built, provided that the Lessee has maintained and repaired the Improvements in accordance with the provisions of this lease;
- (b) Ground rent value for the purposes of Subsection (c) of Section 3.03 shall mean the market rental of the demised premises determined as of the relevant date, such determination to be based on the assumption that the demised premises are vacant lands, free from encumbrance and immediately available for new development and that they may lawfully be used to the greatest, highest and most valuable purpose then available. The rental calculated as aforesaid is hereinafter in this subsection referred to as the "full rental". Provided that if at the relevant date the Improvements originally constructed on the demised premises, maintained and repaired in accordance with the provisions of this lease, are still being used and occupied by the Lessee, a ground rent value of the demised premises shall be calculated as of the relevant date, having regard to the term then remaining, such determination to be based on the assumption that the demised premises are vacant lands, free

from encumbrance and that they may lawfully be used for the purposes for which they are then actually being used and to the density to which the Improvements have then actually been built, provided that the Lessee has maintained and repaired the Improvements in accordance with the provisions of this lease. The rental calculated in accordance with the preceding sentence is hereinafter referred to as the "occupation rental". During the period from November 1st, 2035 to October 31st, 2045, if the Lessee is continuing to use and occupy the Improvements as originally constructed and maintained and repaired in accordance with the provisions of this lease, the rental for such ten year period shall be as follows:

- (i) for the period from November 1st, 2035 to October 31st, 2036, the occupation rental plus 10% of the difference between the occupation rental and the full rental;
- (ii) for the period from November 1st, 2036 to October 31st, 2037, the occupation rental plus 20% of the difference between the occupation rental and the full rental;
- (iii) for the period from November 1st, 2037 to October 31st, 2038, the occupation rental plus 30% of the difference between the occupation rental and the full rental;
- (iv) for the period from November 1st, 2038 to October 31st, 2039, the occupation rental plus 40% of the difference between the occupation rental and the full rental;
- (v) for the period from November 1st, 2039 to October 31st, 2040, the occupation rental plus 50% of the difference between the occupation rental and the full rental;
- (vi) for the period from November 1st, 2040 to October 31st, 2041, the occupation rental plus 60% of the difference between the occupation rental and the full rental;
- (vii) for the period from November 1st, 2041 to October 31st, 2042, the occupation rental plus 70% of the difference between the occupation rental and the full rental;

- (viii) for the period from November 1st, 2042 to October 31st, 2043, the occupation rental plus 80% of the difference between the occupation rental and the full rental;
 - (ix) for the period from November 1st, 2043 to October 31st, 2044, the occupation rental plus 90% of the difference between the occupation rental and the full rental;
 - (x) for the period from November 1st 2034, the full rental.
- (c) Ground rent value for the purposes of Subsection (d) of Section 3.03 or at any time during the term if the Improvements are, by agreement between the Lessor and Lessee, demolished for the purpose of rebuilding shall mean the market rental of the demised premises determined as of the relevant date, having regard to the term then remaining, such determination to be based on the assumption that the demised premises are vacant lands, free from encumbrance and immediately available for new development and that they may lawfully be used for the greatest, highest and most valuable purpose then available.
- If the Lessor and Lessee shall not have agreed upon any of the said ground rent values within three months of any dates upon which they are required to be determined pursuant to Subsections (b), (c) and (d) of Section 3.03, then they shall be determined by arbitration as provided for by Article XVII hereof.

Section 3.05: Basic Rent for Second, Third and Final Periods of Term

Once the basic rent has been determined for the second, third and final periods of the term, either by agreement or by arbitration, the Lessor and Lessee agree that they will execute an agreement confirming and recording such ground rent value as so determined and such agreement shall be supplemental to and shall form a part of this lease.

Section 3.06: Payments as Additional Rent

The Lessee covenants with the Lessor that it will pay

unto the Lessor the rent reserved hereby in the manner hereinbefore mentioned without any deduction whatsoever and that the Lessee will in each and every year during the term pay as additional rent and discharge, within 30 days after the same shall become due and payable, all taxes, rates, duties, assessments, including local improvement rates and other charges that may be levied, rated, charged or assessed against the demised premises, the Improvements, all equipment and facilities thereon or therein and any other property of any nature whatsoever thereon or therein, and every tax and licence fee in respect of any and every business carried on thereon or therein in respect of the use or occupancy thereof by the Lessee (and any and every sub-lessee and licensee) whether such taxes, rates, duties, charges, assessments and licence fees are charged by any municipal, parliamentary, school or other body during the term, (but excluding any income or capital gain taxes or estate or inheritance or retail sales taxes imposed upon or with respect to any successor or assign of the Lessor,) and all charges for electric current, water and other rates and all other charges for utilities or services in connection with such business or occupation, nonpayment of which would create a lien or charge against the demised premises or Improvements and will indemnify and keep indemnified the Lessor from and against payment of all loss, costs, charges and expenses occasioned by or arising from any and all such taxes, rates, duties, charges, assessment and licence fees; and any such liens, costs, charges and expenses suffered by the Lessor may be collected by the Lessor as rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears. The Lessee further covenants and agrees that upon the written request of the Lessor it will promptly make available for inspection receipts for payment of all taxes, rates, duties, assessments, including local improvement rates and other charges in respect of the demised premises and the Improvements and all equipment and facilities thereon or therein which were due and payable up to one month prior to such

request, and in any event will furnish to the Lessor, if requested by the Lessor, evidence of payments satisfactory to the Lessor before the 31st day of January in each year covering the payments for the preceding year. The Lessee shall have the right from time to time to appeal (in the name of the Lessor if the Lessee so elects) any assessment of the demised premises and Improvements or other charge or amount referred to in this Section 3.06 provided that in connection with any appeal of the assessment, the Lessee hereby waives in favour of the Lessor, in its capacity as a municipal corporation, all rights during the first period of the term of this lease to use as a ground for such appeal the quantum of the basic rent. Notwithstanding the foregoing, nothing shall be deemed to prevent the Lessor, in its capacity as a municipal corporation, from asserting a position contrary to that of the Lessee, with respect to the quantum of assessment of the demised premises and Improvements.

The Lessee further agrees to pay as additional rent, in equal monthly instalments in advance that annual amount calculated by multiplying by 70¢ the number of square feet of net rentable area of Improvements constructed on the demised premises and sub-leased and with respect to which the sub-Lessee has an immediate right of entry in excess of 90% of the total net rentable area of the Improvements when 90% of such net rentable area of the Improvements has been constructed and so sublet. The additional rent of 70¢ per square foot per annum, calculated as aforesaid, shall continue to be paid until such time as the aggregate of the annual basic rents (by whomsoever paid) for Phases One to Five inclusive (as provided for in the Development Agreement) equals or exceeds \$180,000 or until ten years after the date of the commencement of payment of such additional rent, whichever occurs earlier. For the purposes of ascertaining the date of commencement of such additional rent the Developer shall make available for inspection by the City at all reasonable times such books, documents and records as may be required.

Section 3.07: Changes in Area of Demised
Premises and Improvements

If by agreement between the Lessor and the Lessee the net rentable area of the Improvements is increased or pursuant to Article XIV hereof any additional land or interest in land or easement or right in the nature of an easement is added to the demised premises, the Lessee will in each and every year during the said term pay as additional rent and as and when the same shall become due and payable the amount or amounts of any rent agreed to be paid therefor and any other charge payable in respect thereof.

Section 3.08: Rent to be Net

All rent required to be paid by the Lessee hereunder shall be paid without any deduction, abatement or setoff whatsoever, it being the intention of this lease that all expenses, costs, payments and outgoings incurred in respect of the demised premises and the Improvements or for any other matter or thing affecting the demised premises shall (unless otherwise expressly stipulated herein to the contrary) be borne by the Lessee, that the rent herein provided shall be absolutely net to the Lessor and free of all abatement, setoff or deduction of realty taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the demised premises or any Improvements thereon and that the Lessee shall pay all such taxes, charges, rates, assessments, expenses, costs, payments and outgoings.

Section 3.09: Interest on Amounts in Arrears

When rent or any other amount payable hereunder by the Lessee to the Lessor shall be in arrears, such amount shall bear interest until paid at a rate equal to the then current interest rate being charged by life insurance companies, loan companies or other similar institutions authorized to make mortgage loans in the Province of Ontario for first mortgage loans on premises similar to the demised premises and the Lessor shall

have all remedies for the collection of such interest if unpaid after demand as in the case of rent in arrears but this stipulation for interest shall not prejudice or affect any other remedies of the Lessor under this lease. Any sums, costs, expenses or other amounts from time to time due and payable by the Lessee to the Lessor under the provisions of this lease, including sums payable by way of indemnity, and whether expressed to be rent or not, may at the option of the Lessor be treated as and deemed to be rent, in which event the Lessor shall have all remedies for the collection of such sums, when in arrears, as are available to the Lessor for the collection of rent in arrears. Notwithstanding the foregoing, nothing shall be deemed to deprive the Lessor, in its capacity as a municipal corporation, of any of its rights with respect to the collection of taxes or the rate of interest chargeable on arrears of taxes.

Section 3.10: Adjustment of Rent

In the event that the amount of rent at any time payable hereunder is subject to a revision which is dependent upon a computation or determination to be made pursuant to any provision of this Article III but which has not yet been made and if consequently the amount of the revision of rent cannot yet be ascertained, the Lessee shall, pending the making of the computation, continue to pay rent by monthly instalments equal to the monthly instalments payable in the period immediately preceding the date from which such revision of rent is to be computed or determined and when the revised rent has been ascertained the Lessee shall pay to the Lessor the amount by which the rent, as recomputed, exceeds the amount actually paid during the period between the revision and the computation. No interest shall be payable by the Lessee on the amount so paid to the Lessor if it is paid within ten days of its computation. Any dispute with respect to such computation shall be determined by arbitration as provided for in Article XVII hereof.

Section 3.11: Negotiation for New Lease

During the period from November 1st, 2010 to October 31st, 2050, the Lessor and Lessee agree that if in their joint opinion the Improvements have become obsolete, the Lessee shall have the right during the said period to negotiate with the Lessor for a new lease upon such terms as may be mutually agreed provided that the Lessee undertakes to erect new improvements, satisfactory to the Lessor, on the demised premises.

ARTICLE IV
IMPROVEMENTS

Section 4.01: Completion of Improvements

As part of the consideration for this lease the Lessee agrees to complete all of the Improvements on the demised premises in accordance with the provisions of the Development Agreement. If the Lessee shall default in the completion of all of the Improvements to be constructed on the demised premises in accordance with the provisions of the Development Agreement, the Lessor may at its option terminate this lease subject to the provisions of Article XV hereof provided that notwithstanding anything herein contained if all of the Improvements to be constructed on the demised premises have been certified to have been completed under Section 4.05(b) of the Development Agreement, the Development Agreement shall have no further force or effect with respect to this lease except as to the provisions for the calculation of the amount of the additional rent as provided for in Section 3.06 hereof.

Section 4.02: Use and Ownership of Improvements

The Lessor covenants with the Lessee for quiet enjoyment and to observe and perform all the covenants and provisos of this lease on the part of the Lessor to be observed and performed. The Lessor and the Lessee agree that the title to and ownership

of the Improvements and all alterations, additions changes and substitutions thereto shall at all times during the term hereby granted be vested in the Lessee notwithstanding any rule or law as to immediate vesting of the title to and ownership of the Improvements in the Lessor as owner of the freehold. The title to and the ownership of the Improvements shall not pass to and become vested in the Lessor until the termination of this lease, either by passage of time or other termination and upon such termination, subject to Article XV hereof, the Improvements shall become the absolute property of the Lessor, free of all encumbrance provided that the Lessor's absolute right of property in the Improvements which will arise upon the termination of this lease shall take priority over any other interest in the Improvements which may now or hereafter be created by the Lessee and that all dealings by the Lessee with the Improvements which in any way affect the title thereof shall be made expressly subject to this right of the Lessor and the Lessee shall not assign, encumber, or otherwise deal with the Improvements separately from any permitted dealing with the leasehold interest under this lease to the intent that no person shall hold or enjoy any interest in this lease acquired from the Lessee who does not at the same time hold like interest in the Improvements.

Section 4.03: Ownership of Tenant's Fixtures

The provisions of Section 4.02 shall not be construed to prevent the Lessee from conferring on tenants or occupants of parts of the Improvements the right of property in or the right to remove fixtures or improvements which are of the nature of usual tenant's fixtures and normally removable by them and which are not part of the structure or any essential part of the Improvements. The Lessee shall make good or shall cause such tenants to make good any damage to the Improvements caused by the removal of any tenant's fixtures.

Section 4.04: Removal of Tenant's Fixtures

If the Lessee is not in default hereunder, the Lessee may at, or immediately before the expiration of this lease, remove its furniture, chattels and usual tenant's fixtures not forming any part of the structure of the Improvements and the Lessee may from time to time remove such tenants's furniture, chattels or fixtures in the ordinary course of its business or in the event of any reconstruction, changes or alterations of the Improvements pursuant to the provisions hereof;

Section 4.05: Use of Demised Premises

The Lessee covenants and agrees that (unless with the approval in writing of the Lessor, which approval shall not be unreasonably withheld) neither the demised premises nor the Improvements shall be used for any purpose or purposes whatsoever except as a first class office and retail commercial development, (the uses in the retail commercial development to be similar to those in comparable first class developments), that the area of retail commercial space shall not be increased by more than 7% of the area allocated for such purpose at the time when the Improvements have been certified to have been completed by the Review Authority pursuant to Section 4.05(b) of the Development Agreement, that the net rentable area, except for the retail commercial space which may be increased by 7% as aforesaid, shall not be increased beyond the net rentable area constructed at the time when the Improvements have been certified to have been completed by the Review Authority pursuant to Section 4.05(b) of the Development Agreement, that the area of Publicly Usable Open Space shall not be diminished and that no part of the demised premises or Improvements shall be used at any time for any purpose or in such manner which would be a nuisance. The Lessee at its expense shall maintain, repair and replace as required under the terms of this lease the Publicly Usable Open Space and shall at all times permit it to be used by the public for such purposes as are from time to time permitted in public parks in the City of

Hamilton and are appropriate to the development. The Lessor agrees to provide police protection for such Publicly Usable Open Space as may be required in the judgment of the Lessor and at least to the same extent as provided during the term of this lease to public parks in the City of Hamilton. The Lessee shall also permit access to the public at all reasonable hours to the malls at concourse and plaza level. The Lessee also agrees at all times during the term of this lease to operate, maintain, repair and replace the Improvements on the demised premises and its own pedestrian and vehicular access thereto so as to complement and achieve the best possible integration of their use, access and function with the other uses in the Urban Renewal Area and the immediately surrounding area.

Section 4.06: Insurance

In addition to the requirements as to insurance contained in the Development Agreement the Lessee covenants and agrees with the Lessor as follows:

- (a) At all times during the term of this lease the Lessee at its own cost and expense shall effect and keep in force insurance protecting both the Lessor and the Lessee (without any rights of cross claim or subrogation against the Lessor) against claims for personal injury, death, property damage, or third party or public liability claims arising from any accident or occurrence upon or in the demised lands and the Improvements thereon, from any cause to an amount of not less than \$5,000,000 (or from time to time such greater amounts as shall be sufficient having regard to any reduction in the real value of the Canadian dollar as determined by the Lessor acting reasonably to afford equivalent protection) for personal injury, death, property, or other claims in respect of any one accident or occurrence;

- (b) The Lessee, at its own cost and expense, shall effect and keep in force during the term of this lease, pressure vessel insurance protecting both the Lessor and the Lessee in respect of such pressure vessels as the Lessor may from time to time reasonably deem necessary to insure in such amount in respect of such risks as are normally covered by prudent owners of similar properties in Ontario (which coverage shall include loss or damage caused by rupture of steam pipes);
- (c) At all times during the term of this lease the Lessee shall at its own cost and expense maintain in accordance with policy terms and conditions and with any one or more companies reasonably satisfactory to the Lessor rental income insurance for loss of rental income because of loss or damage caused by any of the perils against which the Lessee shall have insured the Improvements to the value of not less than 40 percent of all rents normally received in any twelve-month period from tenants of the Lessee:
- (d) At all times during the term of this lease the Lessee shall at its own cost and expense insure and keep insured or cause to be insured and kept insured the Improvements in accordance with policy terms and conditions in any one or more companies approved by the Lessor (such approval not to be unreasonably withheld) in a sum, at the Lessee's option of not less than 80% (without any co-insurance provision) or 100% (with a 90% co-insurance provision) of the full replacement value of the Improvements (excluding the replacement value of foundations and architectural fees relating to such foundations) upon the demised premises in the joint names of the Lessor and Lessee protecting both the Lessor and the Lessee (without any rights of cross claim or subrogation against the Lessor) from any loss or damage caused by:
- (i) fire or such other perils as may from time to time be included in the standard fire insurance additional perils supplementary contract generally available in Ontario;

- (ii) risks normally insured against in Ontario for buildings and improvements of construction, location and uses similar to the Improvements.

Provided that if there is a 90% co-insurance provision as aforesaid such a policy shall require the insurer or insurers at all times to ensure that the actual full replacement value is insured against so as to prevent the Lessor or the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery in the event of loss;

For the purposes of this subsection replacement value shall be determined on such basis as may be agreed upon. If the parties are unable to agree as to what constitutes a proper basis for the purpose of the foregoing provisions of this subsection the question shall be determined by arbitration as hereinafter provided.

- (e) Any and all policies of insurance referred to herein shall be written in the name of the Lessee as the insured with loss payable to the Lessor, the Lessee and any mortgagee as their respective interests may appear, and shall contain a subrogation clause to the effect that any release from liability entered into by the insured, prior to any loss, shall not affect the right of the insured or the Lessor or any mortgagee, to recover.
- (f) The Lessee hereby releases the Lessor, its successors and assigns, from any and all liability for loss or damage caused by any of the perils against which the Lessee shall have insured or pursuant to the terms of this lease is obligated to insure the Improvements or any part thereof, and whether or not such loss or damage may have arisen out of the negligence of the Lessor, and the Lessee hereby covenants to indemnify and save harmless the Lessor from and against all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to such loss or damage.

- (g) It is the intention of the parties hereto and they hereby agree that the proceeds of any policies of insurance referred to in Section 4.06(B), or Section 4.06(d) hereof shall be payable as follows:
- (i) Where such insurance proceeds are less than \$100,000 they shall be payable to the Lessee who shall forthwith expend and apply then in rebuilding, reinstating and repairing the Improvements as required by the provisions of this lease and in case such proceeds shall be insufficient for the purpose, the Lessee will make good any deficiency;
 - (ii) Where such insurance proceeds are payable in an amount in excess of \$100,000 but not exceeding \$200,000 they shall be paid to the Lessor or at the option of the Lessee, to the Lessor and any mortgagee jointly, and the cost of rebuilding, reinstating and repairing the Improvements as required by the terms of this lease shall be borne by the Lessee; payment for the work shall be made to the Lessee in a lump sum on completion of the repairs; subject to subclauses (iii) and (iv) hereof any interest accrued on such proceeds shall be added to such lump sum at the time of its payment to the Lessee;
 - (iii) Should the Lessee fail to effect repairs in accordance with subclause (ii) within a reasonable time, the Lessor shall be entitled to effect the repairs itself, retain any insurance moneys against the cost, and recover any balance from the Lessee;
 - (iv) When at the time of the occurrence of the damage or the completion of its repair the Lessee is in default to the Lessor under the terms of this lease but the Lessor has not elected to forfeit the lease, the Lessor shall be entitled, out of any insurance moneys in its hands, or in the hands of the Lessor and mortgagee jointly, to retain any moneys not paid over for the cost of repair against the rectification of the Lessee's default;

- (v) Where such insurance proceeds payable exceed \$200,000 they shall be paid to a Canadian chartered bank or to a trust company authorized to carry on business in the Province of Ontario designated from time to time by the Lessor to the joint account of the Lessor, the Lessee and any mortgagee, work in process shall be paid for in instalments as progress payments out of the insurance proceeds. At all times there shall be retained in such account sufficient of the insurance proceeds to pay for the estimated cost of repair outstanding at the date any progress payment is made. Before any contract is entered into by the Lessee or mortgagee for the carrying out of any repair work pursuant to this subclause (v), copies of the estimates for any work and the contracts for the completion of the work shall be submitted to such of the Lessor, Lessee and mortgagee as shall not be parties to such contracts. Any progress payments to be made under this section to either the Lessee or mortgagee, shall not be made without the submission of a statement, certified by the architect of the party to whom the payments are to be made, stating the estimated amount required to complete the work of repair at the date of the certificate, the amount claimed by individual contractors at that date, the amount of any payments made at that date for work already done, and verifying the standard and quality of the work already done. In making any payment under this subclause shall be had regard to mechanics' lien legislation applicable in the Province of Ontario and there shall be retained in such account for the period specified in such legislation the amount of any hold-back required. In case of dispute over the outstanding cost or the filing of liens on the Improvements or demised premises arising out of the work of repair, there shall be no obligation to make or authorize

any progress or lump sum payment until the dispute is settled or the lien discharged, as the primary duty of repair falls on the Lessee. Should this lease be forfeited, for whatever cause, pursuant to the terms hereof, all moneys remaining in the said account shall be payable to the Lessor and any mortgagee as their respective interests may appear. Should the repairs be completed and should after the hold-back period there remain moneys in the said account, inclusive of interest on such moneys, if any, any such balance shall be paid to the Lessee if it is not then in default under this lease.

In case of any dispute as to the terms of this clause (g) of Section 4.06, such dispute shall be the subject of arbitration in accordance with Article XVII.

- (h) The Lessee shall pay all premiums and costs of all insurance required to be effected by the Lessee under any provision of this lease and shall from time to time keep on file with the Lessor certified copies of insurance policies, renewal contracts and other documents sufficient to show and establish accurately, at all times, the current status of policies in force, and in particular shall submit to the Lessor before the expiration of every current policy, evidence of the renewal of such policy or the issuance of a replacement policy and of the payment of all premiums due for such renewal or replacement, and shall within seventy-two hours notify the Lessor of any cancellation or intended cancellation by any insurer or any policy or any circumstances known to the Lessee materially affecting its coverage. The Lessee shall not cancel any policy of insurance without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Each policy shall provide that no cancellation shall be effective without ten days prior notice by the insurer to the Lessor.
- (i) If the Lessee shall be in default with respect to any of its obligations under this lease regarding insurance, including the obligation to submit proof of insurance to the Lessor,

the Lessor may, but shall not be obliged to, place any insurance at the cost and expense of the Lessee or pay any arrears of premium, and any expense incurred by the Lessor shall be reimbursed to it by the Lessee on demand, and if unpaid after demand, the Lessor shall have all remedies for the collection thereof as in the case of rent in arrears.

- (j) Nothing in this section shall require the Lessee to duplicate any insurance policies or bonds required by the Development Agreement so long as the same are required to be kept in force under the provisions of the Development Agreement.

ARTICLE V

LESSOR AS SUBLESSEE

Section 5.01: Subleasing from Lessee

Should the Lessor become a sublessee of the Lessee pursuant to the Development Agreement or otherwise, all rights, benefits and obligations of the Lessor hereunder shall continue notwithstanding such sublease but without any merging with or any derogation from the rights, benefits and obligations under such sublease and the Lessor shall also have the right further to sublet premises demised under such a sublease.

ARTICLE VI

USE AND MAINTENANCE OF DEMISED PREMISES

Section 6.01: Services

Except as provided in the Development Agreement, the Lessor shall not be obliged to furnish any services or facilities or make any repairs or alterations to the demised premises or the Improvements, the Lessee hereby assuming full and sole responsibility for the condition, operation, repair, replacement, relocation, maintenance and management of the demised premises and the Improvements.

Section 6.02: Operation

The Lessee shall operate, manage and maintain the Improvements as a first quality office and commercial development and

(in addition to performing all its other covenants under this lease) shall properly and adequately supervise the Improvements, shall supply heat, air-conditioning and other necessary building services to tenants and occupants whenever reasonably required, shall keep the Improvements and the demised premises neat and clean, shall impose and enforce regulations relating to the use and occupancy of space in the Improvements consistent with a high quality development, shall maintain the general appearance and standard of the Improvements and shall generally manage the Improvements as would a prudent owner.

Section 6.03: Repairs

The Lessee at its own cost and expense shall during the entire term, put and keep in good order and condition or shall cause to be put and kept in good order and condition the demised premises and the Improvements and the appurtenances and equipment thereof, both inside and outside, including but not limited to Publicly Usable Open Space, fixtures, walls, foundations, roofs, vaults, elevators, escalators and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections (apart from the sewers contained in the easement reserved under the provisions hereof to the Lessor), water, steam, gas and electric pipes and conduits, and all other fixtures in and appurtenances to the demised premises and the Improvements and the machinery and equipment used and required in the operation thereof, whether or not enumerated herein, and shall, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extraordinary, structural or otherwise, and keep the Improvements and aforesaid appurtenances and equipment fully usable for all the purposes for which the Improvements were erected and constructed and the aforesaid appurtenances and equipment were supplied and installed. Such repairs shall be in all respects

to a standard at least equal in quality of material and workmanship to the original work and material in the Improvements or to any more modern standard as may then be prevailing at least equal, under the circumstances, to the quality of the original work and material and shall meet the requirements of municipal (in its capacity as such and not as Lessor except as otherwise provided herein) or governmental authorities and the fire insurance underwriters. The Lessee shall not commit or suffer to be committed any waste or injury to the demised premises or the Improvements or any part thereof for any illegal or unlawful purpose, or in any manner which will result in the cancellation of any insurance or in the refusal of any insurer to issue any insurance as requested. The Lessee shall at all times at its own expense except to the extent that it may be relieved therefrom by municipal by-laws or regulations, keep the sidewalks, curbs, Publicly Usable Open Space, area ways, plazas, concourse and service levels and rights-of-way forming part of the demised premises in good condition and repair and reasonably clean from rubbish, ice and snow and shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any manner except for the reasonable requirements of deliveries, construction, repair and reconstruction as related to the demised premises and except as permitted by the Development Agreement; the Lessee shall maintain all Publicly Usable Open Space including without limiting the generality of the foregoing all landscaped areas, pools, fountains and other components within the demised premises in good order and condition; and shall not injure or disfigure the demised premises or the Improvements or permit, to the extent which is within its reasonable power, the same to be injured or disfigured in any way; and at the expiration or other termination of this lease, the Lessee shall, except as otherwise expressly provided herein, surrender and deliver up the demised premises with the Improvements, and the aforesaid appurtenances and equipment thereof, or any replacements thereof or substitutions therefor, in good order and condition. The Lessee accepts the demised premises in such condition as they may be at the time of delivery, knowing the condition thereof,

and agreeing that the Lessor has made no representation, warranty or agreement with respect thereto.

Section 6.04: Changes and Alterations

The Lessee shall not make or permit to be made any repairs, replacements, alterations, additions, changes, substitutions or improvements (hereinafter collectively referred to as the "alterations") affecting the net rentable area of the Improvements, the Publicly Usable Open Space, areas open to the public, the external appearance of the Improvements or the operations of the mechanical systems in or connected with the Improvements, which would change their nature, area or appearance as originally constructed without first obtaining the written approval of the Lessor thereto, which the Lessor agrees not to unreasonably withhold provided that the Lessee is not in default hereunder and that such changes and alterations are in reasonable conformity with Improvements as originally constructed or as permitted to be changed by Section 4.05 hereof. Before requesting the Lessor's approval, the Lessee shall submit or cause to be submitted in duplicate to the Lessor detailed drawings, elevations (where applicable), specifications (including materials to be used), location (where applicable) and cost estimates of such proposed alterations, one of which copies may be retained by the Lessor. Such alterations shall meet the requirements of all municipal, provincial, federal and other governmental or other authorities, of the fire insurance underwriters and of the mortgagee, if any. All such alterations if estimated to be in excess of \$100,000 in cost shall be by written contract or contracts and the Lessee agrees, if and when requested by the Lessor, to produce to the Lessor an executed copy of such contract or contracts. In the event that any such contract is for an amount in excess of \$250,000, the Lessee agrees that before the commencement of any such alteration it will, at its own cost and expense, if required by the Lessor, deliver or cause to be delivered to the Lessor a performance of contract bond satisfactory to the Lessor providing for the

due and proper completion by the contractor of such alterations in accordance with the contract therefor, such performance of contract bond to be with a surety company licensed to do business in the Province of Ontario and to be in the amount of 100 per cent of the estimated cost of such alterations as certified by the architect in charge of the same. The said contract shall provide

- (a) for the completion of such alterations according to the terms and provisions set out in this Section 6.04 within a reasonable period (excluding delays by strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water, or other casualty or by any other matter not within its control and not caused by its default or act of commission or omission and not avoidable by exercise of reasonable effort or foresight) and in a good and workmanlike manner in accordance with the approved plans, drawings, revisions (where applicable), specifications (including materials to be used), location (where applicable) and cost estimates certified and verified as aforesaid and in accordance with all requirements of the law, and
- (b) for payment and discharge of any mechanics' or building liens which may be filed in connection therewith, up to the date of the actual completion of such alterations, as certified by the architect in charge of the same and up to and including the last day for filing claims for mechanics' liens, immediately after which the said performance of contract bond may be cancelled and the surety released. The Lessee covenants and agrees that any alterations or other additional work once begun shall be prosecuted with reasonable diligence to completion free and clear of any and all mechanics' liens or other liens, conditional sale contracts, chattel mortgages or similar claims or encumbrances against the demised premises, the Improvements, the Lessor or any mortgagee, and performed in all respect in accordance with the law.

Section 6.05: Damage or Destruction

- (a) The partial destruction or damage or complete destruction by fire or other casualty of the Improvements shall not terminate this lease or entitle the Lessee to surrender possession of the demised lands or to demand any abatement or reduction of the rent or additional rent or other charges payable under this lease, any law or statute now or in the future to the contrary notwithstanding.
- (b) In the case of damage to, or total or partial destruction of the Improvements or any part thereof, the Lessee shall give the Lessor prompt notice thereof, and shall promptly proceed, at its own cost and expense, to restore the Improvements so damaged to the same condition as prevailed immediately prior to the occurrence of such damage in accordance with Sections 6.03 and 6.04 hereof where applicable. The Lessee shall furnish the Lessor with a written estimate of an architect qualified to practice in the Province of Ontario, selected by the Lessee and approved by the Lessor, (which approval shall not be unreasonably withheld) of the cost fully to repair such damage or destruction. The proceeds of all insurance in respect of such damage or destruction shall be used for the purpose of the repair and/or restoration of the demised premises and Improvements in accordance with the provisions of Clause (g) of Section 4.06 hereof.
- (c) If the Improvements shall be destroyed or damaged and in the opinion of the Lessee's architect as certified to the Lessor either the estimated cost of repairing such destruction or damage exceeds four times the annual rent payable hereunder in the 86th lease year, or the time reasonably anticipated as being necessary for the repair with due diligence of such destruction or damage exceeds six months, and if such destruction or damage shall have occurred after the expiration of the 86th lease year, and if the Lessee shall be entitled to terminate and shall terminate all existing leases and agreements for leases with lessees and occupants of the Improvements, and shall not be in default under this

lease, the Lessee shall have the option by written notice given to the Lessor within 90 days after the occurrence of such destruction or damage to terminate this lease, such termination to take effect 60 days after the exercise of the option. On such termination all proceeds of insurance or other moneys payable in respect of such destruction or damage shall be divided between the Lessor and the Lessee as their respective interests in such moneys may appear immediately prior to the exercise of the said option in such proportions as the Lessor and Lessee may agree (having regard, in determining the Lessor's proportion to the then present value of the rents payable hereunder, to the then present value of the municipal taxes on the demised premises and Improvements being received by the Lessor in its capacity as a municipal corporation immediately prior to to such damage or destruction, to the Lessor's right to the Improvements at the end of the term had such destruction or damage not occurred and to the cost of demolition of Improvements and/or restoration of the demised premises to the condition of vacant lands so as to permit new construction). In addition to the foregoing the Lessor shall also be entitled to receive three years rent which payment shall not be taken into account in making the foregoing determination and in default of agreement, in such proportions as shall be determined on arbitration as hereinafter provided. In the event of termination of this lease as aforesaid, rent and all other charges affecting the demised premises shall be paid and adjusted to the date of termination.

- (d) Should the Improvements or any major component thereof be destroyed or damaged totally or to such an extent as to render 85% or more of the sublet area thereof unusable and the Improvements or any major component thereof so damaged or destroyed shall be incapable of being rebuilt and/or repaired and restored with reasonable diligence within twenty-four months of the happening of such damage or destruction (as certified by the Lessee's architect) and if the Lessee

shall be prevented for a period of 12 months from starting to rebuild or restore the same for any of the reasons set out in Section 9.01 hereof, then the Lessee may by notice in writing to be given to the City and to the Mortgagee, if any, within 15 months after the date of the destruction or damage (which notice shall specify the cause which prevented commencing the building or restoration of the Improvements, the reasonableness of such cause to be subject to arbitration in accordance with Article XVII) terminate this lease wholly or in respect of the damaged major component and in such event the obligations of the parties hereunder with respect to the portion in question shall terminate and the insurance moneys payable as a result of such destruction or damage shall be apportioned between the Lessor, the Lessee and the Mortgagee, if any, as their respective interests may appear, (having regard, in determining the Lessor's proportion to the then present value of the rents payable hereunder, to the then present value of the municipal taxes on the demised premises and Improvements being received by the Lessor in its capacity as a municipal corporation immediately prior to such damage or destruction, to the Lessor's right to the Improvements at the end of the term had such destruction or damage not occurred and to the cost of demolition of Improvements and/or restoration of the demised premises to the condition of vacant lands so as to permit new construction). In addition to the foregoing the Lessor shall also be entitled to receive three years rent which payment shall not be taken into account in making the foregoing determination, and failing agreement as to said apportionment, such apportionment shall be determined in accordance with the provisions of Article XVII.

In the event that destruction or damage is of a major component of the Improvements as aforesaid, the rent payable hereunder shall be adjusted by the parties and failing agreement thereon by arbitration in accordance with Article XVII.

Section 6.06: Mechanics' Liens

The Lessee shall throughout the said term at its own cost and expense cause any and all mechanics' liens and other liens for labour, services or materials alleged to have been furnished or to have been charged by or for the Lessee or any one on its behalf at the demised premises or the Improvements, which may be registered against or otherwise affect the demised premises or the Improvements, to be paid, satisfied, released, cancelled and vacated within 30 days after the Lessor shall send to the Lessee written notice by registered mail of any claim for any such lien. Provided, however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien the Lessee shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge such lien, or providing such other security in respect of such claim as will result in the discharge of such lien, provided always that neither the demised premises nor the Improvements thereon shall thereby become liable to forfeiture or sale. The Lessor may, but shall not be obliged to, after expiration of thirty days after the Lessee has received notice as aforesaid, discharge any lien filed or registered if in the Lessor's judgment, the demised premises or the Improvements or any part thereof or the Lessee's interest therein becomes liable to any forfeiture or sale or is otherwise in jeopardy and any amount paid by the Lessor in so doing, together with all reasonable costs and expenses of the Lessor shall be reimbursed to the Lessor by the Lessee on demand together with interest at the rate set out in Section 3.09 hereof from the date incurred until paid and may be recovered as rent in arrears. Nothing herein contained shall authorize the Lessee, or imply any consent or agreement on the part of the Lessor, to subject the Lessor's estate and interest in the

demised premises and Improvements to any lien.

Section 6.07: Compliance with Governmental and other Regulations

The Lessee covenants that it will comply with all provisions of law including; without limitation, federal and provincial legislative enactments, municipal zoning and building by-laws and any other government or municipal regulations which relate to the demised premises or the Improvements or to the operation and use of the Improvements and the making of any repairs, replacements, alterations, additions, changes, substitutuions, or improvements of or to the Improvements or any part thereof. The Lessee covenants to comply with all police, fire and sanitary regulations imposed by any federal, provincial or municipal authorities or made by fire insurance underwriters, and to observe and obey all governmental and municipal laws, by-laws, regulations and other lawful requirements governing the conduct of any business conducted on the demised premises or in the Improvements.

Section 6.08: Maintenance and Repair of Common Areas

The Lessee agrees to pay such proportion as may be agreed to by the Lessor and the Lessee of expenses relating to repairing, cleaning, maintaining and reconstructing any Improvements, areas or services, external to the demised premises but contained within the area bounded on the north by the south limit of Merrick Street, on the east by the west limit of James Street North, on the south by the north limit of King Street West and on the west by the east limit of Bay Street North, the use of which is common to the demised premises and any abutting property. Notwithstanding the foregoing, should the Lessee with the Lessor's consent construct sidewalks or other improvements (with the exception of overpasses) external to the area bounded as aforesaid, the Lessee shall pay all expenses relating to the repairing, cleaning maintaining and reconstructing any such improvements.

Section 6.09: Signs

The Lessee agrees not to exhibit on the demised premises or the Improvements any sign or signs not approved by the Lessor,

such signs to be integrated with the overall design of the Urban Renewal Area and to be restricted to non-flashing signs identifying the establishment and the nature of its business, the design, placing and number of such signs to be subject to the approval of the Lessor. Any approval required under this Section 6.09 shall not be unreasonably withheld.

Section 6.10: Non-Discrimination

The Lessee agrees that it will not discriminate in its employment practices at any time during the period of this lease or in the use of leasing or occupancy of any portion of the demised premises or the Improvements by reason of race, colour, religion or national origin.

Section 6.11: Workmen's Compensation

At all times during the said term, the Lessee shall at its own expense procure and carry or cause to be procured and carried and paid for fully Workmen's Compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any work, non-payment of which could create a lien on the demised premises or the Improvements.

ARTICLE VII

EXPROPRIATION

Section 7.01: Rights on Expropriation

In the event of the expropriation of the whole or any part of the demised premises or the Improvements or any interest therein, the Lessee shall not be entitled to any compensation by reason of the fact that the basic rent may then be lower than the current ground rent value at the date of the expropriation, provided that this shall not preclude the entitlement of the Lessee to compensation for the Improvements. In the event of the expropriation of a portion of the demised premises or the

Improvements, this lease shall not terminate but rent reserved hereunder will abate to the extent that such expropriation has reduced the value the Lessee of the demised premises or the Improvements remaining. In default of agreement as to any such abatement it shall be settled by arbitration as provided for in Article XVII. If as a result of any partial expropriation of the demised premises or the Improvements it becomes necessary to reconstruct or alter so much of the Improvements as remain unexpropriated in order that the remaining portions thereof may be used and operated practicably and economically without limiting its rights to expropriation compensation as aforesaid, the Lessee shall at its own expense perform all work necessary to reconstitute such remaining portions practicably and economically and the provisions of Section 6.04 herein shall apply to such work. The Lessor and Lessee shall inform each other fully of the claims for compensation made by each of them in the event of any expropriation and shall not claim compensation on any basis inconsistent with this lease, and shall afford reasonable cooperation to each other in the prosecution of any proper separate claims. Any compensation to the Lessee for Improvements shall reflect the interest of the Lessor therein at the end of the term.

ARTICLE VIII

INSPECTION

Section 8.01: Inspection and Exhibition by Lessor

The Lessor, its architects, agents and employees shall have the right to enter on the demised premises and the Improvements at any reasonable time for the purpose of inspection and ascertaining the condition or state of repair thereof or verifying that the provisions of this lease are being complied with and the Lessee covenants upon reasonable notice to permit access for these purposes. The Lessor shall be entitled to exhibit the Improvements at any time during usual business hours to actual or prospective purchasers, mortgagees or encumbrancers of the Lessor's interest and estate,

and the Lessee shall upon reasonable notice permit access for this purpose. During the final year of the term the Lessor shall be entitled to display upon the Improvements and the demised premises signs advertising the demised premises and Improvements as being available for purchase or lease provided such signs are displayed in such a manner as not to interfere unreasonably with the conduct of the Lessee's business.

ARTICLE IX

UNAVOIDABLE DELAYS

Section 9.01: Force Majeure

If by reason of strike, lockout, war, rebellion, material or labour shortage due to national emergency, fire, flood, wind, water or other casualty or by any other matter not within its control and not caused by its default or act of commission or omission and not avoidable by reasonable effort or foresight, the Lessee is in good faith and without default or neglect on its part prevented or delayed in the completion of any repair of the Improvements which under the terms of this lease it is required to do by a specified date or within a specified period of time, the date or period of time within which the work was to have been completed may be extended on certificate of the architect in charge of the same by a period of time equal to that of such delay or prevention, and the Lessee shall not be deemed to be in default if it performs and completes the work in the manner required by the terms of this lease within such extended period of time or within such further extended period as may be agreed upon from time to time between the Lessor and the Lessee.

ARTICLE X

INDEMNITY

Section 10.01: Exemption of Lessor from Liability and Indemnity by Lessee

The Lessor shall not be liable or responsible in any

way for personal or consequential injury of any kind whatsoever that may be suffered or sustained by the Lessee or any tenant, employee, agent or invitee of the Lessee or any other persons who may be upon the demised premises or the Improvements or for any loss, theft, damage or injury to any property upon the demised premises or Improvements however caused. The Lessee shall indemnify the Lessor against all claims by any person arising from the operation of the Improvements or any defect or want of repair therein or any want of maintenance thereof or anything done or omitted to be done on the demised premises or the Improvements (including any adjoining sidewalks) or any other thing whatsoever related thereto (except for any claim arising from the negligence of an officer, employee or servant of the Lessor while acting within the scope of his duties or employment) whether arising from any breach or default or from any negligence by the Lessee, its tenants, agents, contractors, employees, invitees or licensees or from any accident, injury or damage or any other cause whatsoever related thereto; and such indemnity shall extend to all costs, legal fees, expenses and liabilities which the Lessor may incur with respect to any such claim.

ARTICLE XI

ASSIGNMENT BY LESSOR

Section 11.01: Right of Lessor to Assign or Encumber

Nothing contained in this lease shall prohibit or restrict the Lessor or shall imply any such prohibition or restriction from assigning, syndicating, mortgaging, encumbrancing or otherwise dealing with its reversionary interest in the demised premises and the Improvements, but subject always to this lease and all the rights of the Lessee hereunder. The Lessee shall promptly, whenever from time to time requested by the Lessor, execute an acknowledgement or certificate in favour of any actual or prospective purchaser, mortgagee, encumbrancer of the Lessor's interest, acknowledging or certifying as to the status of this lease, as to any modifications thereof, as to any breaches of covenant known to the Lessee and as to the state of the rent account, with the intent that any such acknowledgement or certificate

may be relied upon by the person to whom it is addressed.

ARTICLE XII

SUBLETTING AND ASSIGNING

Section 12.01: Lessee's Rights of Subletting and Assigning

- (a) Except as herein provided and except for subleases or subleases of subleases or assignments thereof, of parts of the individual Improvements to bona fide prospective tenants or by tenants thereof, neither the Lessee nor any sublessee or assignee shall assign or sublet, without the leave of the Lessor which leave may be arbitrarily withheld notwithstanding any law or statute now or in the future to the contrary. Provided that, without the leave of the Lessor, which leave shall not be unreasonably withheld, there shall be no such sublease or assignments to any person, firm or corporation which has an interest in the Lessee or the Guarantor directly or indirectly, as partner, shareholder, guarantor, debtor or creditor or otherwise, or in which the Lessor or the Guarantor has an interest as partner, shareholder, creditor or otherwise. The Lessee further agrees that the aggregate gross rentals under such subleases shall at all times be sufficient to enable it to meet its mortgage commitment and all obligations under this lease, including payment of taxes. No such sublease shall be for a term (taking into account any renewals or extensions) which shall extend beyond the expiration of the term of this lease. Nothing herein contained shall authorize the Lessee, or imply any consent or agreement on the part of the Lessor, to subject the Lessor's estate in the demised premises and Improvements to any sublease and no sublease shall release or impair the continuing obligations of the Lessor hereunder.
- (b) The Lessee shall not without prior written concurrence of the Lessor accept rent from any of its tenants for longer in advance than six months.

ARTICLE XIII

BANKRUPTCY

Section 13.01: Bankruptcy of the Lessee

If the term hereby granted shall at any time be seized or taken in execution by any creditor of the Lessee or if the Lessee shall make a general assignment for the benefit of creditors, or if it shall institute proceedings to subject itself to The Winding-Up Act or to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file an application or petition or answer or consent seeking re-organization or readjustment of its indebtedness under The Bankruptcy Act or the Companies Creditors Arrangement Act or any law of Canada or any province thereof relating to bankruptcy or insolvency or shall consent to the filing of any such application or petition or shall consent to the appointment of a receiver or if the Lessee or its directors shall pass any resolution authorizing the dissolution or the winding up of the company or if a receiver, interim receiver, trustee or liquidator of all or substantially all of its property shall be appointed or applied for by it, or if a judgement, decree, or order shall be entered by a court of competent jurisdiction adjudging it a bankrupt or insolvent or subject to the provisions of The Winding-up Act or Bankruptcy Act or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, dissolution or winding up or any similar relief under The Bankruptcy Act or The Companies' Creditors Arrangement Act or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Lessee and any such appointment, order or process remains unstayed or undischarged for a period of 30 days, the rent for the three months next ensuing after the then current month shall immediately become due and payable and the lease shall at the option of the Lessor subject to Section 15.03 hereof immediately become terminated.

ARTICLE XIV

CHANGES IN DEMISED PREMISES

Section 14.01: Additions to and Deletions from the
Area of the Demised Premises

The Lessor and the Lessee agree that from time to time as may be considered by them to be necessary or desirable for the purpose of the construction and erection or use or operation of the Improvements or for other purposes approved by the Lessor and the Lessee, the Lessor may lease to the Lessee and the Lessee may take and rent from the Lessor, any additional amount or interest in land or easement or right in the nature of an easement and that in such event the Lessor and the Lessee will execute a supplemental lease therefor for the balance of the term hereof and upon and subject to such conditions as may then be agreed upon and otherwise subject to the conditions of this lease and amending Schedule A hereto, by adding thereto any such additional land or interest in land or easement or other right; and any such supplemental lease shall form a part of this lease and be read together with this lease. The Lessor and the Lessee agree that from time to time, as any land or interest in land or easement or right in the nature of an easement may be agreed by both of them to be unnecessary for the purposes of the construction and erection or use or operation of the Improvements, the Lessor and the Lessee will execute a partial surrender of this lease excepting such land or interest in land or easement or other right from the provisions of this lease and amending Schedule A hereto by deleting therefrom any such land or interest in land or easement or other right; and any such partial surrender of lease shall form a part of this lease and be read together with this lease.

ARTICLE XV

DEFAULT

Section 15.01: Right of Re-entry

- (a) If the Lessee shall fail or neglect to perform or comply with any of the terms, covenants or conditions contained in this lease (other than the covenants to pay rent or taxes) on the part of the Lessee to be performed or observed, the Lessor shall notify the Lessee, the Guarantor and any mortgagee who has filed the notice referred to in Section 15.03(a) hereof in writing accordingly. Such notice and the notice referred to in Section 15.01(b) hereof shall not be a valid notice for purposes of the lease unless it is also given to any such mortgagee. Such notice having been given, the Lessee shall
- (i) forthwith after receipt of such notice commence to remedy the breach complained of in such notice and complete it within 60 days after the giving of such notice; or
 - (ii) if more than such 60 days are reasonably required to remedy, with reasonable diligence, the breach complained of in such notice, forthwith after receipt of such notice commence to remedy the same and prosecute the same to completion with reasonable diligence; or
 - (iii) notify the Lessor within 15 days after the giving of such notice by the Lessor that the Lessee disputes the matters contained in the aforesaid notice given by the Lessor, in which case unless otherwise agreed such issues shall be determined by arbitration as herein provided; if such determination be adverse to the Lessee, wholly or in part, the Lessee shall forthwith commence to correct the matters complained of by the Lessor, or that portion thereof as to which such determination shall have been adverse to the Lessee, and complete the same within 60 days after such determination or, if more than such 60 days are reasonably required to complete such correction, commence to correct

the same within such 60 days and prosecute the same to completion with reasonable diligence; and if so requested by either party, the arbitrator shall as part of his determination under this item (iii) establish a time reasonably required for such completion, and if such time be established, the same shall be completed within such time, except that such time shall be extended to the extent that the parties hereto may agree in writing; provided that, if in the opinion of the Lessor there would be danger that the demised premises or the Improvements would be materially injured or that the Lessor's interest in the demised premises or the Improvements or under this lease would be materially impaired or endangered by reason of delay in curing the alleged default whether the matter has been submitted to arbitration or otherwise, the Lessor may cure the default, and, if the determination by arbitration is adverse to the Lessee, all reasonable expenses incurred by the Lessor in curing the default shall be a sum of money which sum together with interest thereon from the date such expenses are paid at the rate provided for in Section 3.09 hereof shall be rent, and shall be paid by the Lessee to the Lessor within 7 clear days after the Lessor shall make demand for payment thereof by the Lessee, and such curing of the default by the Lessor shall, subject to Section 15.02, not constitute a waiver of the default or affect any of the Lessor's rights or remedies with respect thereto. If any such default or neglect is not cured as aforesaid the Lessor or the Lessor's agents or employees authorized by it at its option may terminate this lease and may immediately or at any time thereafter re-enter the demised premises and Improvements with or without process of law and take possession thereof, and the Improvements shall be forfeited to and become the property of the Lessor as liquidated damages without compensation therefor to either the Lessee or the Mortgagee. Such re-entry and repossession shall not work a forfeiture or waiver of the rents to be paid

and the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

- (b) If the rent, taxes, or any other sums required to be paid to the Lessor by any provision of this lease shall not be paid on any day when such payment is due, the Lessor shall forward notice in writing of such failure to the Lessee, the Guarantor and any mortgagee of whom the Lessor has notice and if the failure, notice of which has been given, is not cured within 30 days after the date of receipt of such notice, the Lessor may, at the end of the said period of 30 days, give to the Lessee, Guarantor and any such mortgagee a notice of intention to end the term, specifying a day not less than 30 days nor more than 60 days thereafter whereupon if the default or neglect is not cured, or if this lease shall expire or be forfeited or be terminated by any other provision in it contained, the Lessor or the Lessor's agents or employees authorized by it may, subject to Section 15.03 at its option terminate this lease and may immediately or at any time thereafter re-enter the demised premises and Improvements with or without process of law and take possession thereof, and the Improvements shall be forfeited to and become the property of the Lessor as liquidated damages without compensation therefor to either the Lessee or the Mortgagee.

Section 15.02: Lessor's Right to Cure Defaults

The Lessor shall have the right at all times to enter the demised premises and Improvements for the purpose of curing any default of the Lessee, and no such entry for such purpose shall be deemed to work a forfeiture or termination of this lease unless the Lessor otherwise expressly elects in writing, and the Lessee shall permit such entry. The Lessor shall give not less than seven days' notice in writing to the Lessee of its intention to enter for such purpose but may enter upon a shorter period of notice or without notice where in the Lessor's reasonable judgment there is real or apprehended emergency or danger to persons or property, or where any delay in remedying such default would or might materially prejudice the Lessor. The Lessee shall reimburse the Lessor upon demand

for all expenses incurred by the Lessee in remedying any default, together with interest thereon at the rate provided for in Section 3.09 hereof from the date incurred until paid. The Lessor shall be under no obligation to remedy any default of the Lessee and shall not incur any liability to the Lessee for any act or omission in the course of its remedying or attempting to remedy any such default unless such act amounts to negligence of the Lessor.

Section 15.03: Notice To and Remedies of Mortgagees

- (a) Any mortgagee may file with the Lessor written notice of its mortgage specifying therein an address for any notices to be given by the Lessor to the mortgagee and thereafter no re-entry, forfeiture or termination of this lease by the Lessor shall be valid as against such mortgagee unless the Lessor shall first have given the mortgagee notice of the default or contingency entitling the Lessor to re-enter, terminate or forfeit this lease and of the Lessor's intention to take such proceedings, and requiring the mortgagee to cure the default. The mortgagee shall thereafter have such time as may be reasonably necessary to cure the default and which shall include the time otherwise permitted to the Lessee to cure such default as well as, if requested by the mortgagee, such time as may be required by the mortgagee to realize on its security under such mortgage and which in any event shall not be less than 3 months, and the mortgagee shall be permitted access to the demised premises and Improvements for that purpose. If the default is cured within such time, the mortgagee shall be entitled to continue as Lessee for the balance of the term remaining at the date of notice of default, provided that it attorns as Lessee to the Lessor and undertakes to be bound by and to perform the covenants under this lease;
- (b) If this lease shall be subject to termination or forfeiture pursuant to Section 13.01 the Lessee's default shall be deemed to have been sufficiently cured if the mortgagee shall, as against the Lessee, take possession and control of the demised premises and Improvements assume the lease and covenant with the Lessor to perform all the obligations of the Lessee under

- and cure any default by the Lessee within the period specified;
- (c) Any re-entry, termination or forfeiture of this lease made in accordance with the provisions of this lease as against the Lessee shall be valid and effectual against the Lessee even though made subject to the right of any mortgagee of the Lessee's interest to cure any default of the Lessee and continue as Lessee under this lease.

ARTICLE XVI
FIRST MORTGAGE

Section 16.01: Additional Restrictions Respecting
Mortgaging and Encumbrancing by the Lessee

The Lessee may at any time and from time to time mortgage or encumber its interest in the demised premises, the Improvements and this lease by a mortgage by way of assignment, sublease or otherwise and any mortgagee or assignee of a mortgagee may, whether such mortgaged interest was derived through the mortgagee following the realization by the mortgagee of the security of the mortgage or by the exercise of the power of sale in the mortgage or otherwise, by assignment, sublease or otherwise sell or transfer such mortgaged interest and so on from time to time, provided the following conditions have been complied with:

- (a) The mortgagee or encumbrancer shall covenant with the Lessor to be bound by all the covenants and obligations of the Lessee hereunder as soon as such mortgagee or encumbrancer enters into possession of the Lessee's interest, or otherwise takes steps to enforce its security which have the effect of depriving the Lessee of the ability fully to perform those covenants and obligations, and upon the sale or transfer of the mortgaged interest following the realization by the mortgagee of the security of the mortgage or by the exercise of the power of sale in the mortgage or otherwise, the assignee of the mortgaged interest shall covenant with the Lessor to perform all the Lessee's obligations under this lease but so soon as the assignee becomes bound by the Lessee's obligations, the mortgagee or encumbrancer shall be relieved from its covenant;

- (b) Every mortgage or encumbrance of the Improvements shall be made expressly subject to the rights of the Lessor under this lease, and in particular to the right of the Lessor to acquire title thereto upon expiration or termination of this lease, as provided herein;
- (c) The mortgage or encumbrance upon the Lessee's leasehold interest and the demised premises and the Improvements shall not include any property except the Lessee's interest in this lease, the demised premises and the Improvements and fixtures, and chattels of the Lessee situate thereon;
- (d) The mortgage is a first mortgage, the only second mortgage permitted hereunder being the second mortgage to the Lessor to secure arrears of ground rent as hereinafter provided;
- (e) The terms of the said mortgage and the amount thereof shall be subject to the reasonable approval of the Lessor.

Section 16.02: Postponement

The Lessee shall use its best efforts and exercise all due diligence to arrange its initial first mortgage financing without any postponement respecting any of the rent payable under this lease. It is agreed however that if the Lessee cannot arrange its initial first mortgage financing upon practical and business-like terms without such a postponement then a postponement of the rent payable hereunder except the first \$1,000 per annum shall be granted by the Lessor upon the request in writing of the Lessee provided that:

- (a) Such first mortgage financing shall be with a recognized financial institution, authorized to make mortgage loans in the Province of Ontario and the interest rate shall not exceed the then current interest rate for mortgage loans on premises similar to the demised premises;
- (b) Such postponed rent shall not include the first \$1,000 per annum payable hereunder and shall not include any taxes or other payments payable as additional rent under this lease;
- (c) Such mortgage shall provide for equal monthly or quarterly instalments to amortize the loan over a period of not more

then 45 years and not less than 35 years and shall not contain any power of sale except upon at least thirty days' notice in writing to the Lessor;

- (d) Such postponement shall only relate to the payments referred to in clause (c) above and shall not relate to any amount of principal or interest accelerated by default;
- (e) The mortgagee shall have entered into an agreement satisfactory in form and substance to the Lessor whereunder it shall agree with the Lessor that if such postponement shall occur any moneys received by the mortgagee shall be received by it as if it were a mortgagee of a freehold in possession under the laws of the Province of Ontario and the mortgagee accordingly agrees so to account to the Lessor and pay to it all moneys to which the Lessor is entitled on such basis. The mortgagee shall further agree periodically, at the request of the Lessor, to report to the Lessor on the standing of the mortgage and to give sixty days written notice to the Lessor should it intend to avail itself of its right to postpone;
- (f) Such postponement shall only relate to the initial first mortgage financing provided that the Lessor shall not be required to postpone its interest as aforesaid in favour of any mortgage which matures later than 45 years after the commencement of the term hereby demised;
- (g) Any arrears of such postponed ground rent shall bear interest at the first mortgage rate and shall be secured by a second mortgage payable on demand.

Section 16.03: Lessee to Comply with Lease,
Mortgage and other Obligations

The Lessee shall observe and perform all its covenants and obligations incurred in respect of assignments, subleases, agreement for tenancy, the first mortgage of the demised premises and Improvements, and shall not suffer or allow any such obligations to be in default; and if any such default shall occur, the Lessor

may, but shall not be obliged to, rectify such default for the account of the Lessee, and any amount paid by the Lessor in so doing, together with all reasonable costs and expenses of the Lessor, shall be reimbursed to the Lessor by the Lessee on demand together with interest at the rate provided for in Section 3.09 hereof from the date incurred until paid, and may be recovered as if it were rent in arrears.

ARTICLE XVII

ARBITRATION

Section 17.01:

If the Lessor and the Lessee do not agree as to any of the matters which are by the provisions hereof to be determined by arbitration, any such disagreement shall be decided by a single arbitrator pursuant to the provisions of the Ontario Arbitrations Act, R.S.O. 1960, Chapter 18, Revised Statutes of Ontario 1960, and amendments thereto or any re-enactment thereof and amendments thereto.

ARTICLE XVIII

TITLE

Section 18.01: Acceptance of Title

The Lessee acknowledges that it has examined title to the demised premises and is satisfied therewith and waives any objections to title in connection therewith.

ARTICLE XIX

GUARANTEE

Section 19.01: Guarantee of Lessee's Obligations

For valuable consideration the Guarantor hereby upon the terms and conditions herein set forth, unconditionally

guarantees and agrees with the Lessor that all the covenants, agreements and other obligations of the Lessee under this lease shall be fully performed; and provided that and notwithstanding anything herein contained to the contrary, the parties hereto agree each with the other that so soon as the guarantee of the Guarantor as described in Section 5.11 of the Development Agreement shall, by virtue of the fulfilment of the conditions set forth in said Article 5.11 of the Development Agreement, be unconditionally cancelled and of no further force and effect and void, the guarantee of the Guarantor hereunder and hereinabove immediately described shall likewise thereupon be and become immediately unconditionally cancelled, of no further force and effect and void, and the City shall furnish the Guarantor with a release therefrom. Such guarantee shall be on the following terms:

- (a) The liability of the Guarantor to the Lessor shall be for all purposes as if the Guarantor was a primary obligor hereunder and not merely a surety for the obligations of the Lessee, and the Lessor shall not be obliged to or exhaust any recourse which it may have against the Lessee or any other person before being entitled to claim against the Guarantor;
- (b) No dealings between the Lessor and the Lessee of whatever kind, whether with or without notice to the Guarantor shall exonerate the Guarantor in whole or in part and in particular and without limiting the generality of the foregoing, the Lessor may modify or amend this lease or any obligation of the Lessee, take securities, release securities or other guarantees for performance by the Lessee and otherwise deal with the Lessee, this lease and any other persons the Lessor may see fit without affecting, lessening or limiting in any way the liability of the Guarantor;
- (c) Any account settled or stated, or any other settlement made between the Lessor and the lessee and any determination made pursuant to any provision of this lease which is expressed to be binding upon the Lessee shall be binding upon the Guarantor;

- (d) The Guarantor shall make payment to the Lessor of any amount payable hereunder by the Lessee to the Lessor but unpaid upon demand, and shall on demand perform any other obligations under this lease which the Lessee has failed to perform and any demand made by the Lessor upon the Guarantor shall be deemed to have been effectually made if notice has been sent pursuant to provisions of Article XXII hereof;
- (e) No assignment of this lease unless agreed to by the Lessor under terms of this lease shall affect the guarantee.

ARTICLE XX

SURRENDER OF DEMISED PREMISES AND THE IMPROVEMENTS

Section 20.01: Surrender

At the end of the term hereby granted, either by forfeiture, default or lapse of time, the Lessee shall surrender the demised premises and the Improvements to the Lessor in the condition in which they are required to be kept by the Lessee under the provisions of this lease, except as herein otherwise expressly provided.

ARTICLE XXI

OVERHOLDING

Section 21.01: Overholding

It is agreed that if upon the determination of this lease by passage of time, the Lessor permits the Lessee to remain in possession of the demised premises and accepts rent in respect thereof, a tenancy from year to year or otherwise shall not be created by implication of law, and the Lessee shall be deemed to be a monthly tenant only at the then current rent.

ARTICLE XXII

NOTICE

Section 22.01:

Any notice in writing required or permitted to be given to the Lessee hereunder shall be sufficiently given if delivered to an officer of the Lessee personally or mailed by registered mail, postage prepaid addressed to

Any notice mailed as aforesaid shall be deemed to be given to the Lessee on the first business day following the date of such mailing.

Any notice in writing required or permitted to be given to the Guarantor hereunder shall be sufficiently given if delivered to an officer of the Guarantor personally or mailed by registered mail, postage prepaid, addressed to Yale Properties Limited, 2015 Peel Street, Montreal 110, Quebec, Canada.

Any such notice mailed as aforesaid shall be deemed to be given to the Guarantor on the first business day following the date of such mailing.

Any notice in writing required or permitted to be given to the Lessor shall be sufficiently given if delivered to the City Clerk personally or mailed by registered mail, postage prepaid, addressed to the Lessor, care of City Clerk, Corporation of the City of Hamilton, City Hall, Hamilton, Ontario. Any such notice mailed as aforesaid shall be deemed to have been given to the Lessor on the first business day following the date of such mailing.

Any party may at any time give notice to the other parties of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party.

ARTICLE XXIII - MISCELLANEOUS

Section 23.01: Remedies to be Cumulative

It is expressly understood and agreed that the remedies of the Lessor under this lease are cumulative and the exercise by the Lessor of any right or remedy for the default or breach

of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect, or prejudice any other right or remedy or other rights or remedies, to which the Lessor may be lawfully entitled for the same default or breach; and any waiver by the Lessor of the strict observance, performance or compliance by the Lessee of or with any term, covenant, condition or agreement herein contained, or any indulgence granted by the Lessor to the Lessee shall not be deemed to be a waiver of any subsequent default or breach by the Lessee, nor entitle the Lessee to any similar indulgence theretofore granted.

Section 23.02: Relationship of Parties

It is understood and agreed that the provisions contained in this lease shall not be deemed to create any relationship other than that of landlord and tenant as to the demised premises.

Section 23.03: Time of Essence

Time shall be of the essence of this lease, save as herein otherwise specified.

Section 23.04: Amendment

This lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the parties hereto or by their successors or assigns.

Section 23.05: Binding Effect

It is further agreed and declared that these presents shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns as limited in this lease.

Section 23.06: Counterparts

This lease may be executed in several counterparts each of which when executed by the parties shall be deemed to be

an original and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have hereunto caused to be affixed their respective corporate seals attested by the signatures of their respective proper officers duly authorized for such purpose.

CORPORATION OF THE CITY OF HAMILTON

By _____

_____ C.S.

By _____

_____ C.S.

YALE PROPERTIES LIMITED

By _____

_____ C.S.

R. C. MONAGHAN
B.A.Sc., M.E.I.C., P.ENG.
CO-ORDINATOR

YOUR FILE NO.



THE CORPORATION OF THE CITY OF HAMILTON

OFFICE OF CO-ORDINATOR
CIVIC SQUARE DEVELOPMENT

3 July, 1970.

Mayor and Members of
City Council.

Mr. Mayor and Members
of City Council:

Re: Civic Square - Report of
the Negotiating Committee.

Your Committee submits herewith for your consideration a draft of the Development Agreement and Schedules which has been negotiated with Yale Properties Limited and the Standard Life Assurance Company to 30 June, 1970.

The enclosed has had incorporated into it the intent of the Memorandum of Agreement and Yale's letter of 15 May, 1970, both of which were adopted by City Council on 15 May, 1970.

The enclosed is essentially the document which will be recommended for execution but is not to be considered a complete document for there are some minor changes in the wording and some schedules not included, for example, Schedule "A" to the Development Agreement and the Schedules to the Form of Lease and adaptations thereto for Phases II to IV, inclusive. These changes are being made in the document and will be made available when completed.

Also, there will be revisions to Schedules "B-1" to "B-10", inclusive, to reflect any changes required to physically integrate the improvements with existing features in and around Civic Square. Some of these changes are already known to us but there has not been sufficient time to have the drawings revised because of more pressing issues. Such changes will be made and revised drawings will be used for producing the schedules which will form a part of the final document.

Yale Properties Limited and the Standard Life Assurance Company have both negotiated in good faith over the past forty-five days leading to the preparation of the enclosed

Continued.....

3 July, 1970

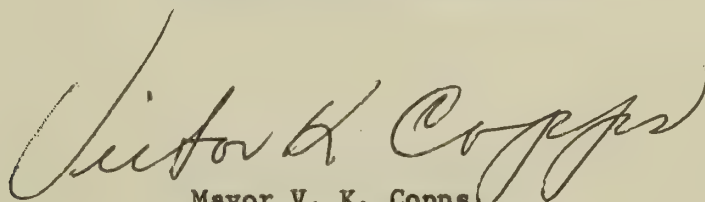
- 2 -

Continued.....

document which is as agreed upon between these Companies and the Negotiating Committee and is recommended for approval of City Council.

Your Committee seeks approval of City Council of the documents submitted herewith.

Respectfully submitted,

A handwritten signature in cursive script, reading "Victor K. Copps". The signature is written in dark ink and is positioned above the printed name and title.

Mayor V. K. Copps,
Chairman,
Civic Square Negotiating Committee.

RCM:jw

Encl.

ROSS & ROBINSON

BARRISTERS & SOLICITORS

WILLIAM L. ROSS, K.C. (1890-1947)
CECIL W. ROBINSON, Q.C.
SAM FOSTER ROSS, Q.C.
JOHN C. SAVCHUK
JAMES G. MILLIGAN
GREGORY R. CARPENTER
JOHN M. DEAN
ROGER M. MORRIS

TELEPHONE 528-0481
AREA CODE 416

FOURTH FLOOR
39 JAMES STREET SOUTH

HAMILTON 10, CANADA

3rd July 1970

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GOVERNMENT DOCUMENTS

The Corporation of the City of Hamilton,
Hamilton, Canada.

Dear Sirs:

Our clients, The Standard Life Assurance Company and Yale Properties Limited, have authorized us to advise you on their behalf that they are in agreement with the Civic Square Negotiating Committee as to the contents of the Development Agreement and its schedules, including form of Ground Lease. These matters were settled and agreed to by and between the parties at their meeting on 26th June 1970 and were subsequently settled generally as to form, content and wording by their respective solicitors on 30th June 1970, subject to completion of the following matters:

- (a) Decisions are to be reached between solicitors as to whether the Development Agreement is to be registered on the title to the various Parts and as to whether the subject lands are to be placed under the Land Titles Act or the Certification of Titles Act.
- (b) The arrangements with respect to the development of Phase Five (The T. Eaton Company Limited) remain to be settled with The T. Eaton Company Limited, which might require changes in the Development Agreement where it relates to Phase Five.
- (c) Final preparation of certain schedules to the Development Agreement and to the form of Ground Lease is not complete, although the form and content of the same have generally been agreed upon. Similarly, revisions will be made to other schedules contained in the Development Agreement to reflect any changes required to

The Corporation of the
City of Hamilton

3rd July 1970

physically integrate the improvements with existing features in and around Civic Square.

- (d) The final wording of several paragraphs in the Development Agreement and in the form of Ground Lease remain to be settled between solicitors so as to properly and accurately record in such documents in proper legal language the terms and intent of the agreement reached by the parties. We are working with your solicitors on these items and expect that such wording will be settled and incorporated into the Development Agreement and form of Ground Lease shortly.

All of the above listed matters should be settled by or on behalf of the parties within the next short while and will be immediately incorporated into the Development Agreement and form of Ground Lease and thereafter made available.

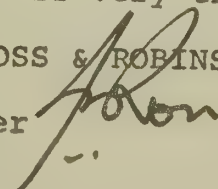
Subject to the foregoing, the draft form of Development Agreement and the schedules, including form of Ground Lease, enclosed herewith, contain the terms of the agreement reached by and between our clients and the Civic Square Negotiating Committee on 26th June 1970.

It is understood by all parties that the other members of the financial consortium have the right to examine and make suggestions as to changes in the terms of these documents.

We also confirm to you that our clients have incorporated a private Ontario corporation under the name Greater Hamilton Developers Limited, which will be the nominee of our clients as the Developer and in such an event, Yale Properties Limited will be the guarantor.

Yours very truly,

ROSS & ROBINSON

per 

SFR:JL
Enc.

City of Hamilton
Treasury

Estimated Ground Rent to be paid by Yale Properties Limited (1)
(together with an approximate estimate of Realty Taxes) (13)

Phase	Component	Areas - in sq.ft.		Ground Rental		Realty Taxes
		Land(4)	Net Rentable Building(2)(3)	Land - @ 48¢ OR per sq.ft.	Formula - Land -12¢sq.ft. Bldgs.-10¢sq.ft.	
I	Start Oct.19/70; Complete Oct.18/72					
	Land	155,281				
	First Office Tower		324,000			\$ 350,000
	(Possible Roof Top Restaurant)		(8,000)(11)			)
	Banking Chamber and Offices above		20,850			83,000)
	Retail Commercial Space		35,200			)
	Plaza Restaurant		108,490			170,000)
	Cinemas (2 - with total of 1,310 seats)		8,400			)
	Storage Areas		15,800			49,000)
	Mailing and Loading Areas		(30,000)(11)			)
	Parking - 290 spaces		(7,000)(11)			)
		<u>155,281</u>	<u>512,740</u>	<u>\$ 74,534.88</u>	<u>L. \$ 18,633.72</u>	<u>\$ 652,000</u>
					<u>B. 51,274.00 (14)</u>	
					<u>\$ 69,907.72</u>	
II	Start Oct.18/72; Complete Apr.18/74					
	Land	121,933				
	Second Department Store - Upper		45,270			
	- Plaza		31,950			
	- Concourse		47,150			
	- Basement		50,150			
			<u>174,520</u>			
	Retail Commercial Space		53,840			
	Storage Areas		(10,000)(11)			
	Parking - 155 spaces		(11)			
		<u>121,933</u>	<u>228,360</u>	<u>\$ 58,527.84</u>	<u>L. \$ 14,631.96</u>	<u>\$ 290,000</u>
					<u>B. 22,836.00</u>	
					<u>\$ 37,467.96</u>	
III	Start Apr.18/74; Complete Apr.18/76					
	Land	67,978				
	Second Office Tower		294,800			\$ 310,000)
	(Possible Restaurant - Plaza Level)		(8,000)(11)			)
	Associated Retail and Commercial Space		37,940			150,000)
	Storage Areas		(4,000)(11)			)
	Mailing and Loading Areas		(2,000)(11)			)
	Parking - 107 spaces		(11)			)
		<u>67,978</u>	<u>332,740</u>	<u>\$ 32,629.44</u>	<u>L. \$ 8,157.36</u>	<u>\$ 460,000</u>
					<u>B. 33,274.00</u>	
					<u>\$ 41,431.36</u>	

Estimated Ground Rent to be paid by Yale Properties Limited (1)
(together with an approximate estimate of Realty Taxes) (13)

Phase	Component	Areas - in sq. ft.		Ground Rental		Realty Taxes
		Land (4)	Net Rentable Building (2) (3)	Land - @ 48¢ OR per sq. ft.	Formula - Land -12¢ sq.ft. Bldgs.-10¢ sq.ft.	
IV	Start Apr.19/74; Complete Apr.19/76					
	Land	75,120				
	Hotel (342 private rooms together with convention rooms)		185,000			
	Associated Retail and Commercial Space		48,120			
	Storage Areas		(5,000) (11)			
	Mailing and Loading Areas		(3,000) (11)			
	Parking - 151 spaces		(11)			
		<u>75,120</u>	<u>233,120</u>	<u>\$ 36,057.60</u>	L. \$ 9,014.40 B. 23,312.00 \$ 32,326.40	<u>\$ 296,000</u>
V	Start Oct.19/70; Complete Oct.18/72					
	T. Eaton Co. - 93,000 sq.ft. Addition (6)					
	Portion on Partnership					
	Land	21,093	63,000			
	Balance on own land		30,000			
	Parking - 116 spaces			(11)		
		<u>21,093</u>	<u>93,000</u>	<u>\$ 10,124.64</u>	L. \$ 2,531.16 B. 6,300.00 \$ 8,831.16	<u>\$ 118,000</u>
VI	Start Apr.18/74; Completion (5)					
	Land	239,561				
	Residential -					
	Buildings - No. 1		220 Units		\$ 42,900.00	
	2		179 Units		34,905.00	
	3		239 Units		46,605.00	
	4		59 Units		11,505.00	
	5		111 Units		21,645.00	
			808 Units	(10)	\$157,560.00 (10)	
	Parking - 522 spaces			(11)		
		<u>239,561</u>			<u>\$157,560.00</u>	<u>\$ 230,000</u>
	Sub-totals	<u>680,966</u>	<u>1,399,960 (12)</u>	<u>\$211,874.40 (12)</u>	<u>\$347,524.60</u>	<u>\$2,046,000</u>
VII	Start to be at City's decision (7)					
	Land	66,127				
	Farmers' Market		Not decided			
	Library		Not decided			
		<u>66,127</u>				
	Totals	<u>747,093</u>	<u>1,399,960 (12)</u>	<u>\$211,874.40</u>	<u>\$347,524.60</u>	<u>\$2,046,000</u>

Estimated Ground Rent to be paid by Yale Properties Limited (1)
(together with an approximate estimate of Realty Taxes) (1)

Notes

1. Does not include any amounts for parking and storage areas, for which no rent is to be paid.
2. Building areas subject to 5% adjustment up or down.
3. As supplied July 2,, 1970 by Arthur F. Lau, architect for Yale Properties Ltd.
4. As supplied July 2, 1970 by Arthur F. Lau, and calculated by the City Surveyor.
5. Agreement with respect to residential portion (Phase VI) to be signed by April 18, 1974.
6. Calculated from information presently available.
7. Decision not yet reached as to size of area, nor whether the land will be purchased or leased from the Partnership.
8. All retail area calculations are from outside of exterior walls to centre line of partitions, and as supplied by Arthur F. Lau.
9. Estimate may vary beyond the 5% tolerance referred to in Note 2.
10. Calculated as at April 18, 1974. See Sections 3.04(5) and 3.06(2)(c).
11. Not included in this calculation of ground rent.
12. Does not include square footage or normal ground rent of residential units, for which ground rent is calculated in accordance with Section 3.06(2)(c).
13. Because the services of the former Assessment Department are no longer available as a source of estimated assessment values, the estimates of realty and business taxes are approximations. Using an average business assessment rate of 25% of realty value, business taxes would amount to an additional \$511,000.
14. Does not include rent which may be charged in accordance with Section 3.06(2)(b).
15. Rent for that portion of the building located on Partnership land.

July 6, 1970

JCJ/PP

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SUMMARY OF MAJOR CHANGES IN
DEVELOPMENT AGREEMENT AND GROUND LEASE

A. DEVELOPMENT AGREEMENT

1. There are now seven Parts instead of four with the Art Gallery having been moved to the south side of King Street and the Farmers' Market and Library sharing the Part Seven site situate on the south side of Merrick Street. The Residential Development Opportunity has been added as Phase Six. The Second Office Tower now has a separate site (Part Three). The details of the Phases are set out in Section 3.04 on Pages 11 and 12 of the Agreement.
2. If the necessary Ontario Municipal Board and other approvals have not been obtained so as to permit the City to lease Part One to the Developer by October 19, 1970 the Developer has the option of terminating the Agreement. This date may have to be altered if Part One is to comprise part of Block 44N which has not as yet been expropriated.
3. The Lease may designate that the lease of any Part be granted to a corporation (other than the Developer) in which, unless otherwise agreed to by the City, any one or more of the Developer, the Guarantor and The Standard Life Assurance Company have a significant equity interest or to a partnership or consortium on a similar basis.
4. Pases One to Four must be developed in sequence. Any acceleration or change of sequence must be agreed to by the City.
5. The City has agreed to provide police protection for the Publicly Usable Open Space as may be required in the judgment of the City and at least to the same extent that provided to public parks in the City of Hamilton.

6. The rights of first refusal with respect to Phases Two, Three and Four are set out on Pages 13, 14 and 15 of the Agreement and apart from the additional rent for Phase One which is to be increased by adding thereto that annual amount calculated by multiplying by 70¢ the number of square feet of net rentable area of Improvements in Phase One constructed and sub-leased and with respect to which the sub-lessees have an immediate right of entry, in excess of 90% of the total net rentable area of Phase One, when 90% of such net rentable area of Phase One has been constructed and so sub-leased, there are no payments of rent or taxes during the first refusal period. The additional rental of 70¢ per square foot continues only until such time as the aggregate of the annual basic rent for Phases One to Five inclusive equals or exceeds \$180,000 or until ten years after the date of the commencement of payment of such additional rent, whichever occurs earlier. The periods of first refusal may be shortened if someone other than the Developer develops Phases Two or Three. This provision is found at the end of Section 3:04 (4) on Page 13.
7. The Phase Six Residential Opportunity requires that an agreement be reached on or before April 18, 1974 as to the development, leasing, construction period, staging and completion of the Phase. The rent to be paid for Phase Six is to be calculated as set out in Section 3:06 2 (c) wherein reference is made to the 1970 basic land value of \$2,000 per self-contained unit of residential accommodation.
8. The rent to be paid for Phases One to Five inclusive, is the greater of 48¢ per square foot of land leased or 12¢ per square foot of land leased plus 10¢ per square foot of net rentable area of Improvements. The rent for Phase One is to be increased on the basis set out in paragraph 6. above.
9. The Developer is only required to provide a Performance of Contract Bond if it is required by the Developer's mortgagee or financiers.

10. The City is to be permitted to participate in the formulation of any financial plan whenever such plan requires alterations to be made to the Development Agreement or Ground Lease.
11. The City has agreed not to expropriate or otherwise acquire for the purpose of initiating the opportunity for commercial development any of the lands in the northerly 120 feet of the block bounded on the north by King Street West, on the east by James Street South, on the south by Main Street West and on the west by McNab Street South until April 18, 1974 or until such time as 85% of the net rentable areas of Phases One to Four inclusive, devoted to any use which would be the same as that proposed for the aforesaid area, have actually been leased, whichever date or time shall first occur.
12. There is a provision for the temporary use and occupation for the purpose of landscaping or for the purpose of a temporary site office of lands adjacent to a part being developed with the approval in writing of the City. This provision is contained in Section 4:05 (b) on Page 26.
13. The completion certificate may be issued by the Review Authority notwithstanding the fact that with respect to areas which have not at that time been leased by the Developer, the floor, wall and ceiling finishes, electrical circuitry and fixtures, partitions and individual outlets for heating air-conditioning, plumbing and telephone have not been completed, if such areas are properly closed off in a manner acceptable to the Review Authority.
14. The Developer has agreed to pay to the City the sum of \$25,000 toward the cost of construction of tunnels and overpasses and has agreed to construct the necessary approaches, abutments and entrances. If the Developer constructs any such tunnels or overpasses at its expense they shall, upon completion, be sold to the City for \$1.00 each.

15. The Developer has agreed to provide the minimum number of underground parking spaces in connection with each Phase as set out in Schedule "B".
16. Subject to the conditions set out in Section 5:02 on Page 36, the Developer has agreed that the City shall have the right to cause the Developer to construct space for a new library and Farmers' Market facilities on Part Seven. The City may develop Part Seven independently for any public purpose at any time, but if it decides to develop Part Seven for non-public purposes the opportunity so to develop it shall be offered in writing to the Developer and if the City and the Developer cannot agree on the terms and conditions of such development within six months of such offer, the City is free to develop Phase Seven for non-public purposes independently.
17. The Developer's rights to a Part or Phase, which have not then been leased, do not terminate if there is default in a Phase which has been granted to a Company in which none of the Developer, the Guarantor or The Standard Life Assurance Company has any equity interest.

B. GROUND LEASE

1. The dates for the Four Periods of the term have been changed and the final part of the term now expires on October 31, 2069.
2. The areas devoted to underground parking have been excluded from net rentable area for the first period of the term and accordingly no rent is payable with respect to such areas during the first period of the term.
3. The rent for the First Period of the term is to be calculated on the basis set out in Paragraph 8 of the comments relating to the Development Agreement and the manner of calculating

the ground rent value for the Second, Third and Final Periods of the term has been changed. The method of this determination is set out in Section 3:04 on Page 8 of the Lease.

4. By reason of the change in assessment procedure there is no tax floor provision contained in the Lease.
5. There is a provision for the payment of additional rent calculated on the basis set out in Paragraph 6 of the comments relating to the Development Agreement
6. The period during which the parties may negotiate for a new lease if the Improvements have become obsolete now runs from November 1st, 2010 to October 31st, 2050.
7. The Lessee may now increase the retail commercial space in Phase One by not more than 7%, but otherwise the net rentable area shall not be increased without the Lessor's consent.
8. There is a provision for police protection of Publicly Useable Open Sapce on the basis set out in Paragraph 5 of the comments relating to the Development Agreement.
9. Provision has been made for co-insurance on a restricted basis and insurance proceeds are now to be paid to the joint account of the Lessor, Lessee and Mortgagee instead of to a Trustee, but are to be disbursed and handled on the same basis as contained in the earlier form of lease.
10. There is a provision contained in Section 6:05 (d) on Page 30 which permits the Lessee to terminate the Lease if there is damage, which for reasons beyond the control of the Lessee, the Lessee cannot commence to repair within twelve months of the happening of such damage.
11. Sub-leases entered into by the Lessee are to survive the default by the Lessee and any consequent termination of the head lease.

The ground rent value for the Second, Third and Final periods of the term has been determined. The method of this determination is set out in Section 104 of the Lease.

By reason of the change in assessment procedure there is no variation in the ground rent contained in the Lease.

There is a provision for the payment of additional rent calculated on the basis set out in Paragraph 2 of the Lease, relating to the Development Agreement.

The period during which the parties may negotiate for a new lease of the Development has become obsolete now that the Development has been completed.

The Lease may now increase the retail commercial space in the Development by not more than 10% but otherwise the parties shall not be interested without the Lessor's consent.

There is a provision for police protection of Publicly Usable Areas on the basis set out in Paragraph 2 of the Lease, relating to the Development Agreement.

Provision has been made for contribution on a restricted basis and insurance proceeds, in accordance with the joint account of the Lessor, Lessee and Mortgagee interest in the Development, but not to be distributed and retained on the same basis as contained in the earlier form of Lease.

There is a provision contained in Section 105 (a) of the Lease which permits the Lessee to terminate the Lease if there is damage, which for reasons beyond the control of the Lessee, the Lessee cannot commence to repair within twelve months of the happening of such damage.

The Lease entered into by the Lessee and to survive the termination of the Lease and any consequent termination of the Lease.

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